

H37KLEB1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 769 (AJN)

5 YURI LEBEDEV and TREVON GROSS,

6 Defendants.

Jury Trial

7 -----x
8 New York, N.Y.
9 March 7, 2017
8:53 a.m.

10 Before:

11 HON. ALISON J. NATHAN,

12 District Judge
13 And A Jury

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BY: EUN YOUNG CHOI

DANIEL S. NOBLE

WON S. SHIN

18 MICHAEL CHANG-FRIEDEN, Paralegal

EMILY GRANT, Paralegal

19 Assistant United States Attorneys

20 CREIZMAN, PLLC

Attorneys for Defendant Yuri Lebedev

21 BY: ERIC M. CREIZMAN

MELISSA MADRIGAL

22 JONATHAN MICHAELSON, Paralegal

23 KROVATIN KLINGEMAN, LLC

Attorneys for Defendant Trevon Gross

24 BY: KRISTEN M. SANTILLO

25 BY: HENRY E. KLINGEMAN

H37KLEB1

1 (In open court; jury not present)

2 THE COURT: When we ended last night, I had said,
3 because I anticipated matters to deal with, we would start at
4 8:30. Maybe that message didn't get to --

5 MS. MADRIGAL: My apologies to the Court. Actually,
6 neither one of us heard.

7 THE COURT: Well, why don't we see what we can take up
8 in Mr. Creizman's and Mr. Lebedev's absence, Ms. Madrigal, to
9 the extent that we can just deal with some preliminary logistic
10 matters.

11 MS. MADRIGAL: Absolutely.

12 THE COURT: Ms. Choi.

13 MS. CHOI: Good morning, your Honor.

14 THE COURT: How are you?

15 MS. CHOI: Well, hanging in there. I think everyone
16 else has been sort of in the same boat, too. I wanted to let
17 your Honor know the status of various outstanding issues that
18 we had previously discussed. And if counsel wants to pipe up,
19 because my list may be incomplete, it's only in my head at the
20 moment.

21 First off, obviously, the government intends to rest
22 today. The two next witnesses that we have are the tracing
23 analysis -- the IRS witness that we discussed yesterday and the
24 tracing analysis by RSM, which will both establish which
25 payments were made to Mr. Gross and Mr. Lebedev as they relate

H37KLEB1

1 to the bribery scheme, as well as the Coin.mx scheme.

2 THE COURT: I had thought there was -- I had just John
3 Rollins left.

4 MS. CHOI: That's right. No, no, there's the IRS
5 witness.

6 THE COURT: The IRS witness?

7 MS. CHOI: Yes, those two.

8 THE COURT: Is that Rose Linton?

9 MS. CHOI: That is, your Honor. I was just going by
10 entity, not name.

11 THE COURT: Oh, now I recognize that you said IRS.

12 MS. CHOI: Okay.

13 THE COURT: So the IRS witness and then Mr. Rollins?

14 MS. CHOI: Yes, your Honor.

15 So, along those lines, with regard to the RSM,
16 Mr. Rollins' preparation, I think there are some issues from
17 Mr. Gross' camp that Mr. Noble will deal with because he is
18 going to put that particular witness on. We have discussed it
19 with counsel for Lebedev, and they have no objections to our
20 approach. So we will have to deal with that sort of first or
21 earlier on in the list of things that we need to do.

22 The second issue is exhibits that the government
23 wishes to move in. I'm sad to report that although we provided
24 a list last night, a little tardy because we're all sort of
25 working on multiple things at once -- I know that defense

H37KLEB1

1 counsel has been working hard, we're all up to crazy hours --
2 they didn't have an opportunity to finish going through the
3 list, but we have agreed in principle on the following: There
4 are certain exhibits that we need to move in for purposes of
5 the RSM analysis, the tracing analysis. They have consented to
6 that list, so we were going to move those in in the morning.
7 We will have a brief publishing sequence, as we have, of a
8 certain small subsection of the emails for that purpose. I've
9 talked to counsel for both parties. They've agreed in
10 principle that they'll have the next two days, over the defense
11 case, to continue looking through the list and noting any
12 objections that they may have to the government's list of
13 emails and other documents they would like access to for
14 purposes of summation. So there wouldn't be any prejudice to
15 the government were they to introduce this list for purposes of
16 its rebuttal case, if that makes sense.

17 So, these are documents we would have moved in in our
18 case in chief, but to accommodate defense counsel and make sure
19 that they can have adequate time to review them all, and
20 because your Honor has already alluded to the fact that you
21 would be willing to entertain specific objections to certain
22 emails, that would be our proposal, just to make sure that we
23 can move this case along in a timely fashion.

24 THE COURT: All right.

25 Mr. Klingeman?

H37KLEB1

1 MR. KLINGEMAN: Your Honor, I just want to make a
2 couple of things clear.

3 We agree with what counsel just said. The government
4 produced its list in parts. I stopped counting the number of
5 exhibits after I got to 200, but despite all that, I did review
6 them all, and I have no objections. My co-counsel, who's been
7 busy doing other things, wants to look at them. So we have
8 agreed with the government as to its proposal, but I want the
9 Court to know, I did exactly what I promised to do yesterday in
10 Court.

11 THE COURT: Thank you, Mr. Klingeman. I appreciate
12 that. I know where we are.

13 MS. CHOI: Near the end, your Honor. Near the end.

14 So, that's that issue. And I think the only other
15 issue with regard to logistics, for our purposes, is your
16 Honor's ruling with regard to the outstanding witness issue and
17 the government's efforts to date. And I can describe to you --

18 THE COURT: Yes, I wanted to begin with an update on
19 where we are.

20 MS. CHOI: So, unfortunately, after we left court, we
21 got in motion attempting to contact Secret Service. Overnight
22 we have received a contact of a particular Secret Service
23 general counsel individual, we've reviewed the contents of what
24 Mr. Klingeman has served upon the government, assuming FedEx
25 works the way that it works. We also forwarded that along to

H37KLEB1

1 the agency.

2 I think I have the contact information for an
3 individual who's supposed to reach out to me. I tried to
4 contact them before we got to court at 8:30 this morning, and
5 they were not available as of yet. I don't know if they have
6 had an opportunity to review. I would note this with regard to
7 Mr. Klingeman's proposal, which is that he asks in the Touhy
8 requests for two lines of questioning, one regarding the
9 specifics of the conversation between Ms. Beyer and Mr. Freundt
10 on July 21st, 2015, and, two, a line of inquiry along the lines
11 of what, if anything, Secret Service did to investigate the
12 matter afterwards.

13 I think with regard to Touhy -- and we haven't gotten
14 your Honor's ruling, but I think as a logistical matter, it
15 would be possible to get the witnesses here, I'm hoping, with
16 regard to the first -- or at least Ms. Beyer with regard to the
17 first question. I think the second question is going raise
18 some concerns from the agency's perspective because that
19 strikes at the heart of what Touhy is meant to protect against,
20 because it is an agency that makes its own decisions about how
21 it deals with those internal matters. And I think, given your
22 Honor's inclination yesterday at least, to the extent that I
23 was interpreting it correctly, I think your Honor rightly drew
24 a distinction between the question of the specific impeachment
25 material with regard to Mr. Freundt versus questions writ large

H37KLEB1

1 about the investigation and what Secret Service or Special
2 Agent Jarrow did or did not do, which would get to that second
3 point.

4 So I think as a practical matter, I would just seek
5 clarity. The government's position would be if your Honor is
6 inclined to rule that way, that the real question is the line
7 of questioning regarding the specifics of the conversation and
8 not these other issues. And I think if that were sort of what
9 the Court was inclined to do, I would be in a better position
10 to tell Secret Service that they should make this witness
11 available because it wouldn't implicate any of the underlying
12 Touhy concerns.

13 MR. KLINGEMAN: I can certainly help with that.
14 Obviously, I drafted the Touhy request as broadly as the
15 scenario permitted, just so there would be no later complaints
16 that the government was not on notice. When I say "the
17 government," obviously, in this case, the Secret Service. As
18 we discussed yesterday in colloquy, I'm only interested in the
19 first line of questioning with these witnesses and not the
20 subsequent investigation. And if counsel wants to convey that
21 directly to the Secret Service, I certainly have no objection.

22 MS. CHOI: Your Honor, again, that's fine with the
23 government. Obviously, your Honor still has reserved on that
24 particular question, but if that's your Honor's inclination, I
25 think we would be able to talk to Secret Service about this.

H37KLEB1

1 As a logistical matter --

2 THE COURT: Just to pause, I will return to this when
3 Mr. Lebedev and Mr. Creizman are here, but I want to make sure,
4 because Mr. Lebedev was here yesterday when we took up this
5 issue but Mr. Creizman, I think, left for the final discussion
6 of it. But, Ms. Madrigal, do you want to wait for Mr. Creizman
7 on this one, or do you have a view as to the scope?

8 MS. MADRIGAL: I would like to wait for Mr. Creizman,
9 but I believe that Mr. Creizman would like to still, if
10 possible, call Agent Jarrow to discuss the steps that he took.

11 THE COURT: We'll take that up.

12 MS. CHOI: And, to be clear, we would object to that
13 line.

14 The other issue with regard to the Touhy matter is:
15 I've also had an agent from Secret Service reach out to
16 Ms. Beyer in anticipation of this incident occurring and seeing
17 what her availability is. She, unfortunately, has a medical
18 procedure happening today, so she is not going to be able to
19 board a plane today. I instructed the agent to tell her,
20 because I didn't have direct conversations with her, I
21 instructed the agent to tell her to make arrangements for first
22 thing Wednesday morning for her to arrive here. I said, in
23 anticipation of whatever ruling the Court might have, it's
24 always easier to cancel the plan as opposed to create it last
25 minute. So, my understanding is that instruction has been

H37KLEB1

1 relayed to Ms. Beyer, assuming that her chain approves of
2 whatever approach we end up taking and/or the Court ends up
3 ordering that particular appearance. But I think, as a
4 logistical matter, that means she's not going to be here
5 until -- there are no direct flights from Tallahassee, so she's
6 not going to be here until early Wednesday afternoon at the
7 earliest.

8 THE COURT: Let me pause for a moment.

9 Mr. Lebedev, on Ms. Madrigal's consent, we went ahead
10 this morning talking just around some logistical issues that
11 relate to the question of whether I will order, and, if so, how
12 it will proceed with Agent Beyer to appear. We discussed
13 briefly, also, a process related to the exhibits that the
14 government is seeking to introduce that Mr. Klingeman has
15 indicated he's reviewed and Ms. Madrigal and Mr. Creizman are
16 still reviewing.

17 I had indicated we were starting at 8:30 today, but --

18 MS. LEBEDEV: Sorry. Thank you.

19 THE COURT: -- I think that might have gotten lost in
20 the shuffle.

21 It is now five after 9:00, and we're still waiting for
22 Mr. Creizman. But these things happen, but we do need to keep
23 on schedule.

24 So, Mr. Klingeman, do you want to respond to -- I
25 guess let's think through the timing question.

H37KLEB1

1 MR. KLINGEMAN: We're prepared to continue with the
2 government's case, and then when the government rests, we hope
3 late this morning or first thing this afternoon -- I don't know
4 what Mr. Lebedev's plan is -- but we're prepared to start the
5 Gross case as soon as the Court indicates we should.

6 THE COURT: Okay.

7 MR. KLINGEMAN: We've got a small group of character
8 witnesses scheduled to arrive at the courthouse around
9 10:00 a.m.

10 Mr. Gross is prepared to proceed to testify, if he
11 makes that decision, as he's inclined to do. We hope to have
12 another witness first thing tomorrow, but I'm not sure if that
13 witness is actually going to appear. We've already produced
14 the reverse Jencks on that witness. The government is ready if
15 and when that witness appears.

16 THE COURT: Who is that?

17 MR. KLINGEMAN: That is Loretta Larkins, who's been
18 consulting with counsel about whether to appear or not.

19 But I don't see Mr. Gross necessarily finishing his
20 testimony today, should he start it. So I'm not worried about
21 holding up the Court or the jury in any way. And if by that
22 time, we can have Special Agent Wozniak and Special Agent Beyer
23 here, as the government forecasts, early tomorrow afternoon,
24 that would be fine with us. We'd certainly be happy to
25 conclude with their testimony and the defense case.

H37KLEB1

1 MS. CHOI: Your Honor, to be clear, I have not reached
2 out to Special Agent Wozniak. I took from yesterday's
3 conversation, maybe incorrectly, that the real witness that
4 Mr. Klingeman seeks is Ms. Beyer because Mr. Wozniak is not
5 going to be able to remember -- I mean his testimony is,
6 essentially, I don't remember this conversation at all. She
7 didn't say that.

8 THE COURT: I see no need for the two witnesses. If
9 Ms. Beyer is here, it would become cumulative. This is already
10 on the edge, and we'll do this with Beyer.

11 MS. CHOI: I think part of this question about timing,
12 your Honor, really revolves around getting a sense of what the
13 defense case is going to be.

14 THE COURT: We just got that --

15 MS. CHOI: Right, from Mr. Gross.

16 But I think Mr. Lebedev goes first.

17 THE COURT: Sure.

18 MS. CHOI: But I don't know what the status is because
19 we haven't heard confirmation on that.

20 THE COURT: Ms. Madrigal?

21 MS. MADRIGAL: Sure. Your Honor, I think Mr. Lebedev
22 this morning proposed defense exhibits to the government.
23 There are about ten or twelve maybe -- there aren't that
24 many -- and we indicated to the government last night that
25 Mr. Lebedev did not plan on testifying. And I just spoke with

H37KLEB1

1 him this morning, and he still believes that that's the case.

2 So as of right now, that is our plan. It would be a very short
3 defense case.

4 THE COURT: Okay. So a publication of exhibits that
5 are in by stipulation?

6 MS. MADRIGAL: I am not sure if Mr. Creizman is going
7 to publish them or what exactly he's going to do.

8 THE COURT: Okay.

9 MR. SHIN: And we're reviewing the exhibits, your
10 Honor, and I think there will be time during the breaks to work
11 out any objections.

12 THE COURT: All right. So it sounds like, assuming we
13 finish, the government rests by lunch today -- is that
14 realistic?

15 MS. CHOI: I would hope so, your Honor.

16 THE COURT: -- then a short defense case at this point
17 is anticipated, obviously final decisions to be made by
18 Mr. Lebedev, and then into, at least it sounds like, a few
19 character witnesses, Mr. Klingeman, and then potentially
20 Mr. Gross, depending on his decision?

21 MR. KLINGEMAN: That's our expectation.

22 THE COURT: All right.

23 I think we will need Beyer by the morning.

24 MS. CHOI: By Wednesday morning?

25 THE COURT: Tomorrow morning, yes.

H37KLEB1

1 MS. CHOI: Okay. We'll try. She has a medical
2 procedure this afternoon, and so I don't know whether or not
3 that's actually going to work. We'll see what we can do. I
4 think that -- I hope your Honor recognizes that some of these
5 things are beyond our control, and we're doing the best that we
6 can. I can make that request of her, but, ultimately, I hope
7 your Honor will understand if that's not physically possible
8 because she has to have a medical procedure this afternoon.

9 THE COURT: I'm just thinking through what our options
10 are if she can't be here tomorrow morning. If the defense
11 rests --

12 MS. CHOI: Well, I think, your Honor --

13 THE COURT: I'm working backwards.

14 MS. CHOI: Yes, I understand.

15 THE COURT: Let's do it this way: How long are your
16 anticipated closings?

17 MS. CHOI: It's going to be several hours, your Honor.
18 And I think even if your Honor -- again, I don't know what the
19 flight schedules are. Assuming that she gets here by Wednesday
20 afternoon, early afternoon, if it's going to be pretty short,
21 what we propose is that we wait for her to show up. If there
22 is a rebuttal case that needs to be put on by the government or
23 if there are these evidentiary issues that we need to resolve
24 prior to the government resting its rebuttal case, we can do
25 that. We can leave the question open to the jury, so that

H37KLEB1

1 they -- they may think it's a normal break while we deal with
2 these other things, and then that could be the last witness the
3 defense puts on. But in the alternative, again, for purposes
4 of expediency, we've always said we would stipulate to those
5 facts, and I think that that would be a viable alternative, if
6 your Honor is concerned about delay with regard to this issue.

7 To be perfectly frank, your Honor, I think that if we
8 were to do this on Wednesday afternoon, we could still manage
9 to get all the summations done through Thursday, assuming -- I
10 don't know how long the defense intends to close, but I think
11 we could probably get it all in in one sitting day, and you
12 could charge the jury either Thursday afternoon or Friday
13 morning. It doesn't create that much undue delay. But that's
14 sort of the reality of the situation that we're dealing with
15 presently.

16 I also don't know, quite frankly, if Mr. Gross takes
17 the stand, we may be finding ourselves in Wednesday afternoon
18 territory anyways.

19 THE COURT: Well, I do recognize that, and then we're
20 on a different schedule path --

21 MS. CHOI: Right, right.

22 THE COURT: -- without a problem. I think we need to
23 prepare for the contingencies. It's a big difference, the case
24 going to the jury on Thursday than the case going to the jury
25 on Friday.

H37KLEB1

1 MS. CHOI: Your Honor, I understand that, and I
2 understand your Honor's concerns about timing and the like. I
3 would say, again, I don't know what the defense witnesses will
4 ultimately end up being from Mr. Gross' perspective or what
5 defenses they may raise. The government may have to put on a
6 rebuttal witness, a rebuttal case, depending, and if that were
7 to happen, plus Mr. Gross testifying, that will, I think, put
8 us in a situation where the closings would have to happen
9 starting Thursday morning, the most expedient situation.

10 So we're doing what we can. I think that that's just
11 being realistic about the situation, though. I don't think
12 anyone would disagree that the jury, at the very latest, would
13 be charged Friday morning, which gives them at least a
14 significant portion of Friday to deliberate. It's not ideal,
15 but I don't really see, from a realistic standpoint, that that
16 will, in fact, happen.

17 THE COURT: Mr. Klingeman?

18 MR. KLINGEMAN: Yes, your Honor. My only concern
19 about the summations is the fact that I go last, before the
20 rebuttal, and I just want to make sure I have enough time at
21 the end of the day. So if we start first thing in the morning,
22 say, Thursday, I would anticipate everyone being finished,
23 including the rebuttal. Customarily, the Court keeps the
24 rebuttal short. My concern throughout the trial has been since
25 I go last, I don't want to be the one standing up at a quarter

H37KLEB1

1 of 5:00 with the Court and the jury. So that's my only --

2 THE COURT: Well, we do the best we can.

3 MR. KLINGEMAN: I know.

4 THE COURT: But my consistent rule is we use the time
5 that we have.

6 MR. KLINGEMAN: Yes. And I'm always willing to do
7 that.

8 (Pause)

9 THE COURT: Well, we don't have an update on
10 Mr. Creizman. I do want to hear from him before I rule on the
11 scope of the Beyer testimony issue.

12 Ms. Choi, my request is to have the scheduling process
13 with respect to Ms. Beyer continue even while you're here, if
14 someone from the office can continue to see how quickly she can
15 get here.

16 MS. CHOI: Your Honor, I was actually expecting to --
17 as soon as things get underway here, and the argument is done,
18 I was expecting to go back to my office to try to deal with it
19 myself.

20 THE COURT: I see.

21 MS. CHOI: I hope you might want to let -- if your
22 Honor is inclined, if you could let the jury know that there's
23 nothing wrong with it again. I'm just trying to deal with all
24 the issues at once.

25 THE COURT: Yes, I'm happy to do that.

H37KLEB1

1 MS. CHOI: Thank you, your Honor.

2 THE COURT: We're going to wait for Mr. Creizman.
3 Maybe he didn't make it out of Judge Kaplan's courtroom.

4 MS. CHOI: He was out, your Honor. The emails prove
5 it.

6 THE COURT: Let's turn to the slides issue, if we
7 could, Mr. Noble.

8 MR. NOBLE: Yes, Judge.

9 We've had back-and-forth with defense counsel on these
10 slides, and they had some objections to some of the content on
11 some of the pages. And I believe that we've stripped out the
12 portions of at least the content to which the defendants
13 objected and sent around a revised version of the slides early
14 this morning.

15 THE COURT: Okay.

16 MR. NOBLE: I think on content, in terms of graphics
17 and stuff like that, we're okay. Defense counsel will correct
18 me if there's anything that we missed.

19 THE COURT: Does the version that I have --

20 MR. NOBLE: Yes, it's the same version.

21 THE COURT: Okay.

22 MR. NOBLE: It will be marked, for the record,
23 Government Exhibit 900.

24 THE COURT: Thank you.

25 MR. NOBLE: So, your Honor, we're seeking to admit

H37KLEB1

1 these as summary slides, summary exhibits, pursuant to Rule of
2 Evidence 1006. Essentially what Mr. Rollins is going to
3 testify he did is that the government asked him, among other
4 things -- and this is the portion that I think is relevant to
5 the objection --

6 THE COURT: And if you can remind me who Mr. Rollins
7 is?

8 MR. NOBLE: Mr. Rollins is a consultant at RSM. It's
9 an audit -- it used to be called McGladrey. It's an audit
10 accounting consulting firm. They do work for litigation. They
11 represent defendant side, government side, in various
12 litigation.

13 He is going to be testifying that the government asked
14 him to analyze, with respect to Mr. Gross, ten financial
15 transactions, the ten payments which constitute the corrupt
16 payments that we say were paid by Collectables Club and
17 Kapcharge to Hope Cathedral, the various consulting payments
18 that were made to Mr. Gross and paid into Hope Cathedral's bank
19 account, the \$50,000 payment that was made in November 2014,
20 which was subsequently reversed, as well as two transfers that
21 Hope Cathedral transferred between its accounts in 2015
22 relating to payments that were made by Kapcharge. So there are
23 ten transactions that he is tracing.

24 I don't think defense counsel, Mr. Klingeman, has any
25 objection to the government's presentation of the sources of

H37KLEB1

1 those transactions. I think his objection is on Mr. Rollins'
2 analysis of how those funds were used. And to explain what
3 happened: For instance, you take the \$120,000 transfer, for
4 instance, that went into the church's operating account --

5 THE COURT: Can I just pause you?

6 MR. NOBLE: Yes.

7 THE COURT: Are you explaining something that responds
8 to a pending objection, or has it been resolved?

9 MR. NOBLE: No, no, no, this is something that is
10 pending.

11 THE COURT: Okay. I thought you started by saying you
12 worked it out.

13 MR. NOBLE: The content in terms of like graphics, and
14 bullet points, and stuff like that, that we stripped out.

15 THE COURT: Understood.

16 MR. NOBLE: So there's a more fundamental --

17 THE COURT: I'll pay attention then.

18 MR. NOBLE: There's a fundamental underlying
19 objection, which I think is they have an objection to the
20 assumption that Mr. Rollins made using what's called first-in,
21 first-out. It's an accounting methodology. There are
22 alternatives, but that's the assumption that he used, and what
23 that says is --

24 THE COURT: What are the common alternatives?

25 MR. NOBLE: Last-in, first-out is another accounting,

H37KLEB1

1 which is more in use for inventory purposes in accounting.
2 There is also another alternative of like average balance.
3 There are different ways of matching sources and uses.

4 In conversations with the government, he was told, he
5 was basically instructed, use first-in, first-out, because
6 that's a simplifying assumption to trace how proceeds are used
7 in a bank account. The problem arises -- if there's a zero
8 balance in a bank account, and \$120,000 goes in, and there are
9 no subsequent deposits, it's very easy to trace how the money
10 is used. The problem arises when there's already a balance in
11 there or when there are subsequent deposits, then the question
12 is if you're tracing like how that money is used, what
13 assumptions do you make about which expenses are funded by
14 which deposits.

15 So, for instance, in the first-in, first-out
16 methodology, which he applied here as an assumption, the funds
17 that are already in the bank account are used to pay for the
18 first set of transactions when there's another deposit, even if
19 there's an intervening deposit, and then once those original
20 funds are used up, then the deposited funds are used to pay for
21 the subsequent expenses. It's a simplifying assumption. It's
22 not like he's exercising discretion. He's not going to be
23 opining that this is the best methodology. So we're not going
24 to be proffering him as an expert. He's simply saying if you
25 make this assumption, this is how the proceeds were spent out

H37KLEB1

1 of the bank accounts and out of the credit cards, because some
2 of the credit cards were paid out of the church's operating
3 account, and it's the same assumption applied with respect to
4 the credit cards.

5 So, we have done this analysis, we had prepared the
6 slides and the underlying Excel spreadsheets, we had produced
7 that to defense counsel, pursuant to Mr. Klingeman's request,
8 the Friday -- I believe it was February 17th. The first Friday
9 of trial, we produced the slides. It included the simplifying
10 assumption, the methodology, FIFO, that Mr. Rollins relied upon
11 to create the slides, and we heard no objections until
12 Saturday.

13 Ms. Santillo --

14 THE COURT: What was the timing?

15 MR. NOBLE: So, we disclosed the slides to defense
16 counsel on February 17th. And then just this Saturday,
17 Ms. Santillo sent me an email saying that they were going to
18 object to the use of FIFO, and they claimed that that requires
19 expert testimony for which the government did not provide
20 expert notice, and we did not do so because we don't think this
21 is expert testimony. I wrote back to Ms. Santillo explaining
22 that we did not think it's expert testimony and the basis for
23 which we believe FIFO applying this simplifying assumption is
24 just a factual assumption upon which Mr. Rollins can be
25 cross-examined by defense counsel. And I didn't hear anything

H37KLEB1

1 back until last night, after trial, Mr. Klingeman, and
2 Ms. Santillo, and I were speaking, and they said they're
3 renewing their objection to the FIFO, and that they think this
4 is expert opinion that should have been noticed.

5 THE COURT: When you say "this," is it a subset of
6 these slides?

7 MR. NOBLE: Yes. It's basically the entire underlying
8 tracing analysis. The government oftentimes uses a summary
9 witness, typically another FBI agent, somebody with an
10 accounting background, to look at the bank records, see what
11 the sources of the payments were, and trace the funds. And
12 when there are commingled funds in a bank account, when there
13 are payments that are being made on credit cards, there has to
14 be some assumption made about what's paid first.

15 So defense counsel has long been on notice of this.
16 We never received any objection until Saturday. Really,
17 they're springing this upon us after this whole analysis has
18 been done, after they have had all these slides, kind of on the
19 eve of the government resting. That's just my complaint in
20 terms of the timing of this objection. I wish they would have
21 raised it earlier, so we could have talked about it, briefed it
22 to the Court, and discussed this.

23 But underlying all of that, we don't believe that this
24 requires any kind of expert analysis. If the Court disagrees,
25 we're prepared to offer Mr. Rollins as an expert. We believe

H37KLEB1

1 he's qualified. We've disclosed his resume, his background,
2 his qualifications, his certifications. We can seek to qualify
3 him as an expert. But we do not think that's necessary because
4 this is the same type of tracing analysis that the government
5 uses in all sorts of cases - drug cases where there's money
6 flowing into a bank account, and somebody gets on the stand and
7 says I've looked at all the bank records, this is how the money
8 was spent, based on this assumption. And defense counsel is
9 free to cross-examine about that assumption, to say, you know,
10 Mr. Rollins could have used a different assumption, that the
11 government directed him what payments to look at, the
12 government told him, yes, just use the FIFO methodology, all of
13 that goes to the weight that the jury should place on the
14 slides, on the analysis, but it doesn't go to its
15 admissibility.

16 Furthermore, your Honor, as we indicated to the Court
17 in our email last night, we're seeking a limiting instruction
18 that courts often give when dealing with summary exhibits such
19 as these, to tell the jury that the slides themselves are not
20 evidence, it's the underlying evidence, all the bank records,
21 which will have been admitted by the time Mr. Rollins
22 testifies, that's the evidence, and the jury can just use these
23 slides as an aid to the extent that they find that the
24 underlying evidence supports the analysis in these slides.

25 We don't think the objection has any merit. It would

H37KLEB1

1 fundamentally alter Mr. Rollins' testimony. I think it would
2 result in some delay of the trial because we would have to go
3 and rework the analysis. I think it's fair game -- I don't
4 even know if we can rework the analysis. I think it's fair
5 game for defense counsel to cross-examine on the points that
6 they've raised. And to the extent they want to get into the
7 underlying bank exhibits that are all sourced here, Mr. Rollins
8 is prepared to bring out the underlying documents and talk
9 about them, if necessary, but at bottom, this is a simple
10 tracing analysis that applies an assumption of first-in, the
11 money that goes in first comes out first, and he's going to
12 explain that to the jury, and, as I said, they're free to
13 cross-examine on that assumption, they're free to examine on
14 what the government told Mr. Rollins to do, and courts have
15 held that summary exhibits -- a summary witness can present an
16 analysis that is favorable to one side because defense counsel
17 obviously had the opportunity to analyze the underlying records
18 and present a competing summary analysis, perhaps using a
19 different methodology, which would result in different results.

20 So we don't think there is a basis for the objection.
21 And they've had the underlying bank records for months, and
22 they've had these slides for at least two weeks, and we feel
23 like we're being sandbagged on the eve of resting.

24 MR. KLINGEMAN: Your Honor, perhaps it would be
25 helpful if I explained what we're not objecting to.

H37KLEB1

1 We're not objecting to a summary that is supportive of
2 the government's theory. And there's much in this exhibit that
3 is not objectionable. There's a section in the exhibit,
4 including a classic summary chart on a single page, that lists
5 all the funds that came in from Collectables Club and Kapcharge
6 about which the government has elicited testimony and offered
7 exhibits to support their theory that these were bribe
8 payments. We have no objection to that, even though we will
9 argue that they were not bribe payments.

10 Likewise, there's a whole section of the chart that
11 purports to document expenditures by Mr. Gross on personal
12 items, personal travel, things of that nature. Your Honor
13 ruled in limine before the trial started that that was fair
14 game for the government. We have no objection to that.

15 There are other aspects of the chart that have nothing
16 to do with, quote-unquote, tracing, but actually have to do
17 with the government's attempt to establish venue that purport
18 to list, in summary form, Mr. Gross' presence in the Southern
19 District of New York at various times during the time of the
20 conspiracy. We have no objection to that.

21 What we object to is what the government calls the
22 assumption at the heart of the witness' purported tracing
23 analysis is FIFO, first-in, first-out, accounting methodology
24 that's distinct from a number of other accounting
25 methodologies. And what FIFO does in this particular case is

H37KLEB1

1 it leads to the inevitable conclusion that the money that the
2 government identifies as source was used at the end of the day
3 by Mr. Gross to pay for various things. And if one uses a
4 different accounting methodology, one may come to an entirely
5 different conclusion as to whether those source funds were the
6 same funds that were used by Mr. Gross.

7 And that analysis --

8 THE COURT: Is that hypothetically speaking, or you're
9 proffering that that is the case here?

10 MR. KLINGEMAN: The answer is, I don't know for the
11 precise reason I'm objecting. This is an expert issue. It's
12 indisputably an expert issue.

13 THE COURT: But you were put on notice of --

14 MR. KLINGEMAN: We were not.

15 THE COURT: -- of the mode of analysis in
16 mid-February.

17 MR. KLINGEMAN: Well, let me place that in context.
18 We asked for, under Rule 16, expert notice and disclosure, and
19 the government represented pretrial, there was no expert
20 testimony to be offered. And they continue to say to this
21 moment that Mr. Rollins is not an expert despite his resume,
22 despite his use of particular accounting techniques, and
23 despite his obvious status as an expert.

24 So this is expert evidence, for which we requested
25 notice and were not given notice. This is not Cape Fear where

H37KLEB1

1 I have to keep worrying about whether the government is going
2 to insert expert issues into the case after we've asked for the
3 notice, and it hasn't been given. What we got in my request
4 pretrial for the government's final summary chart -- we can go
5 back to the pretrial conference transcript -- I asked for the
6 final version. What we got on the eve of trial, and the
7 deadline imposed by the Court, was a 207-page exhibit that the
8 government marked as draft, and the government told us would be
9 changing as the trial proofs evolved. So I put it aside, and
10 when this issue started to ripen, we got another version of the
11 same chart on Saturday, 144 pages. Then we got a third
12 version, 128 pages, and now we have the current version that's
13 approximately 122 pages.

14 So we still, until literally 5:00 o'clock this
15 morning, did not have a final version of this chart. We
16 notified the government last weekend that we objected to that
17 section of the chart that makes reference to FIFO analysis and
18 that leads to the conclusions that flow through a number of the
19 other slides.

20 There is no reason Mr. Rollins can't take the stand as
21 a summary witness, in the ordinary course, and testify as to
22 sources of funds, expenditures, travel, in other words, placing
23 Mr. Gross purportedly in the Southern District of New York
24 during relevant time periods, and a number of the other things
25 that the government is seeking to do in support of its case.

H37KLEB1

1 What the witness should not be permitted to do is testify,
2 essentially, as a summary witness or a lay witness by any other
3 name when he's, in fact, an expert witness and giving expert
4 testimony. So we would ask that that portion of his direct
5 examination be precluded. And I cited two cases, I apologize,
6 by email, and we would rely on those very recent authorities in
7 terms of this argument, and, for the record, I'll place the
8 citations in the transcript.

9 The first case we cite is Estate of Jaquez against
10 Flores, 216 WL 1060841, Southern District of New York (KBF),
11 and in that case, which is very analogous to this case, the
12 Court rejected as expert testimony analysis that the government
13 was offering as nonexpert testimony when the expert was not
14 engaged in what the court in Jaquez referred to as a, quote,
15 rote nondiscretionary analysis by a nonexpert, unquote.

16 And, likewise, we cited United States against
17 Blackwood, 366 F. App'x 207 at 2012 (2d Cir. 2010), for a more
18 typical example of a summary chart, examples of which are
19 included in the government's exhibit and to which we have no
20 objection.

21 So we've identified for the government the specific
22 pages to which we object and the specific testimony to which we
23 object, and it would be relatively easy to preclude that, and
24 still the government would have free reign to assert, as it did
25 in its opening statement, that Mr. Gross solicited and accepted

H37KLEB1

1 over \$150,000 of bribe money and then spent some of that money
2 on himself in the form of personal expenses. All that evidence
3 is in the record. This witness can summarize that evidence,
4 and the government can make its same argument in summation.

5 What we object to is the jury being fed an accounting
6 theory that leads to the inevitable and inculpatory conclusion
7 that that specific dollar-for-dollar tracing resulted in
8 Mr. Gross spending the bribe funds, the alleged bribe funds, on
9 himself.

10 (Continued on next page)

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

H37OLEB2

1 MR. NOBLE: Judge, on that last point, what I'm not
2 hearing from Mr. Klingeman is there's anything wrong with the
3 analysis. As he recognized, there are other alternatives, and
4 the defense could have done their own summary charts based on a
5 separate analysis. And defense counsel opened on the fact that
6 the payments that were made to Mr. Gross went to the church,
7 they did not go to him personally. So they were on notice that
8 the government was going to be proving up the fact that the
9 payments, although they were made to the church bank accounts,
10 inevitably flowed to Mr. Gross, and that's what Mr. Rollins's
11 analysis shows.

12 FIFO is not a complicated matter that requires expert
13 opinion, it's an assumption that shows that the first funds
14 into the account are the funds that were used to paid for the
15 first expenses that come out of the account.

16 As I said before, they can cross on that assumption,
17 they can cross that a different methodology could have been
18 used. That's all fair game. But this does not require expert
19 opinion, it's simply -- it's rote, non-discretionary
20 application of a FIFO assumption to the underlying bank
21 records. And you can look at the bank records, and you can do
22 the analysis, and defense counsel could attack him on
23 improperly applying FIFO, or that a different assumption could
24 have been applied, but that doesn't render it expert opinion.

25 On the notice issue, we disclosed an initial draft of

H37OLEB2

1 the slides on February 17th that included the underlying
2 fundamental assumption that FIFO was going to be used, and we
3 heard nothing from defense counsel in objection to that
4 methodology until the email from Ms. Santillo over the weekend,
5 and then again last night from Mr. Klingeman.

6 This is something that they've been on notice about,
7 and they could have raised, and we could have flushed this out.

8 Mr. Klingeman cites a Second Circuit case and a Judge
9 Forrest opinion, neither on point here. The Second Circuit
10 case simply states the basic rule of what a summary chart is,
11 and the Forrest case didn't involve the tracing of funds
12 through a bank account. That is something that is done in
13 almost every criminal case that involves fraud or illegal
14 proceeds of narcotics trafficking. This witness is simply
15 applying an assumption to the underlying records. It's
16 reliable. He can be cross examined about it.

17 In support of the FIFO assumption, it's the most
18 straightforward way to think about a bank account. It's also
19 the most straightforward way to think about a credit card.
20 Because when you have charges on your credit card and you make
21 a payment or you have an outstanding balance on your credit
22 card, what the credit card company does is it takes your
23 payment and it applies to the oldest expenses first, the
24 expenses that have been sitting on your card for the longest
25 period of time.

H37OLEB2

1 So this is just -- it's a simplifying assumption. I'm
2 not hearing that there's anything wrong with it. There are
3 alternatives, of course, and he can be cross examined on that.
4 But this is not expert opinion. He's not opining on anything

5 THE COURT: All right. Last word.

6 MR. KLINGEMAN: Your Honor, there are half a dozen
7 slides in the exhibit alone purporting to explain FIFO. So
8 it's far from simple, and it's far from something that the lay
9 jury would be presumed to know and understand without the
10 benefit of Mr. Rollins' expert explanation.

11 THE COURT: So I think I have to take this as it comes
12 and make that assessment as it comes in. Defense was on notice
13 of this February 17th, it's now March 7th -- 6th, 7th? I could
14 have evaluated that contention exactly as you just stated with
15 time and argument, but the defense having waited until the
16 morning that this witness goes on, my only choice is to allow
17 the witness to take the stand, and I'll have to make an
18 assessment.

19 The jury is now here and it hasn't even been
20 identified to me what exhibits are objected to. And based on
21 the failure, despite notice to raise this sooner, the best that
22 I can do is take it as it comes and, if I conclude in the flow
23 of the direct that there is expertise or technical knowledge or
24 non-readily-available lay assumptions being made, I'll sustain
25 specific objections to particular testimony.

H370LEB2

1 MR. NOBLE: Okay. Understood, Judge.

2 THE COURT: Mr. Creizman.

3 MR. KLINGEMAN: I assume in that regard, Judge, then
4 the exhibits' admissibility should be addressed after the
5 witness concludes the testimony. In other words, in the
6 ordinary course, the witness would take the stand and basic
7 foundation would be established and the exhibit would be
8 offered and published. If your Honor is going to be taking
9 aspects of it on a question-by-question, slide-by-slide basis,
10 we would ask the admissibility and publication be delayed
11 until --

12 THE COURT: We can do it a slide at a time. So we
13 we'll just mark these -- they're page numbered, so why don't we
14 call them Government Exhibit 900-1, 900-2.

15 Do they all go in order?

16 MR. NOBLE: Yes.

17 MS. CHOI: Yes.

18 THE COURT: Does that make sense?

19 MR. NOBLE: That's fine.

20 THE COURT: And as you want to show them, I guess
21 query -- you're not going through all of them.

22 MR. NOBLE: Well, we are, your Honor. It's like five
23 seconds on one slide. I mean, the problem is, though, if we're
24 going to do this one by one, you know, we'll have to take it
25 down, you know, show the parties and then show the jury. It's

H37OLEB2

1 going to really take a long time to get through this. You
2 know?

3 THE COURT: Well, where is the first exhibit you
4 object to, Mr. Klingeman?

5 MR. KLINGEMAN: Beginning at page 7, your Honor. And
6 forgive me for sitting.

7 THE COURT: I can't hear you. I forgive you for
8 everything, but not being able to hear you.

9 MR. KLINGEMAN: Beginning at page 7, your Honor,
10 there's a discussion through page 13 of the first-in, first-out
11 methodology using the type of credit card example that the
12 government just mentioned. And I note, of course, that the
13 credit card example bears no relationship to this case.

14 MR. NOBLE: Judge, these are demonstratives to explain
15 the underlying assumption.

16 THE COURT: So it sounds like when you get to page 7,
17 you lay some foundation as to what this witness will do with
18 this methodology, and I'll make an assessment at that point. I
19 mean, I just have no basis.

20 I'll also say that the 11th hour, it's past that since
21 it's the morning and my jury is here, making this with nothing
22 but speculation as to whether there's any other set of
23 assumptions one could make that would produce a different
24 result, it's troubling, and all I can do is take it as it
25 comes.

H37OLEB2

1 So does that work, Mr. Noble? You'll work with
2 slides --

3 MR. NOBLE: Yes.

4 THE COURT: When we get to that point --

5 MR. NOBLE: I'll take it down, I'll ask him questions
6 about FIFO and --

7 THE COURT: And then I'll make my assessment.

8 MR. NOBLE: To be clear, this is an assumption that
9 he's going to say, 'The government told me just apply this
10 simplifying assumption.'

11 THE COURT: Okay.

12 MR. NOBLE: And then it's a rote application of that
13 assumption to his analysis of the bank records.

14 THE COURT: Okay.

15 MR. NOBLE: And they can cross on that. They should
16 say, 'Well, the government told you to do this.' You know? I
17 mean, and then it's up to the jury to decide how much weight to
18 give this analysis given whatever they do on cross.

19 THE COURT: Yes. I think that you give someone an
20 assumption and that they can cross on it doesn't resolve the
21 expert question.

22 MR. NOBLE: I mean, it's not --

23 THE COURT: Do you have any authority for that notion?
24 I think it's a question of whether these are sort of steps in
25 an analysis that are readily available without specialized or

H370LEB2

1 technical knowledge.

2 MR. NOBLE: It absolutely is. I mean, the jury could
3 do this analysis on their own. We could walk through the bank
4 account, we could say 'this is the balance on this date, then
5 this deposit came in, and then given that there was already
6 money in the bank account, the next set of expenses were paid
7 for by the existing balance, and then the next set of expenses
8 were funded by that \$120,000 deposit'. He's going to explain
9 that that's the methodology that he applied.

10 The jury can look at the underlying exhibits
11 themselves. We could have him walk through the underlying
12 exhibits themselves. It would be very time-consuming, that's
13 why we're doing this as a summary witness, but we could do
14 that. And he would be explaining as a lay witness what he did
15 and this is the result.

16 This is the same analysis that is done in every case
17 where there's criminal proceeds and the government has to do
18 some kind of tracing analysis to say what happened to the money
19 when it went into the bank accounts? It's not expert
20 testimony.

21 And again, I just reiterate, it is relevant that they
22 can cross on this, it is relevant that they could have called
23 their own summary witness who they could have told 'use a
24 different assumption and that's are the results that you get'.
25 But they haven't done so, and they're not saying that the

H370LEB2

1 analysis is incorrect in any way.

2 THE COURT: All right. Bring in the jury.

3 Mr. Creizman.

4 MR. CREIZMAN: Yes, your Honor. First of all, I
5 apologize to the Court. I apologize.

6 There's one thing I just want to address. We have
7 provided the government with defense exhibits this morning.
8 We're going to work out -- we're going to see if we can work
9 out, I think -- we don't intend on publishing any of this, I
10 just intend on standing up and saying 'the government and the
11 defense' -- whatever, 'the defense and the government stipulate
12 that these evidence are admitted into evidence', and then 'we
13 rest'.

14 MS. CHOI: Your Honor, just to be clear, we're going
15 to need a little bit of time just because we got these very
16 early this morning. We think that there are hearsay objections
17 we would raise to several of them. Obviously, we don't have
18 authentication issues, but we would like to discuss that with
19 defense counsel.

20 MR. CREIZMAN: That's fair.

21 MS. CHOI: I don't think we're going to get to this
22 until after lunch anyway. Your Honor, the one thing I would --

23 THE COURT: Beyer.

24 MS. CHOI: Yes. We need to get some clarity on what's
25 going on and make sure that we make appropriate --

H370LEB2

1 THE COURT: Mr. Creizman, briefly, I have indicated my
2 inclination to allow Agent Beyer to be questioned in a very
3 tailored and narrow way to get at what I think is relevant and
4 appropriately for the jury to consider here, which is whether a
5 key cooperating witness testified falsely, as we've discussed.
6 What I'm not inclined to allow, because I don't think it
7 appropriate for the jury to consider, is what steps were taken
8 to diligently chase down what, in fact, Beyer had said.

9 MR. CREIZMAN: Okay. Then certainly I won't -- if
10 that is your Honor's ruling, then I won't -- I don't need to
11 call Agent Jarrow because that would be the only reason I
12 would.

13 THE COURT: So there's agreement on that on the scope
14 of what is appropriate here --

15 MR. CREIZMAN: Right.

16 THE COURT: -- under the limited exception?

17 MR. CREIZMAN: But if I could just make some record.
18 I mean, I did want -- I do want to do that, but I do want to
19 call Agent Jarrow to ask him about the steps because I think
20 that that is relevant, but I accept the Court's --

21 THE COURT: Well, what's the basis for what was done
22 to determine whether or not -- I mean, what we're going to be
23 left with is Freundt's statement as to what occurred and what's
24 been proffered as -- presumably what's been proffered as
25 Beyer's testimony, and it's now been chased down, and it's been

H370LEB2

1 chased down in time to solve this issue. And you can make an
2 argument to the jury that it's either this or that, but what
3 these lawyers did, what their level of diligence was in chasing
4 this down is 403 and irrelevant.

5 MR. CREIZMAN: Understood. I withdraw my objection.
6 I just want the opportunity to say the defense rests and that's
7 it. That's nothing more dramatic than that after introducing
8 whatever evidence we stipulate to.

9 THE COURT: Okay. I don't know what that means.

10 MS. CHOI: I don't know what just happened.

11 THE COURT: You'll certainly get that chance to rest.

12 MR. CREIZMAN: Meaning, yes, no need for Jarrow.

13 THE COURT: Okay. I think we're in agreement. I'll
14 give my reasonings at the break, but I have come to the
15 conclusion that this is necessary and appropriate.

16 MS. CHOI: That's fine, your Honor.

17 Again, I would just remind your Honor that if you
18 could give the instruction about lawyers coming in and coming
19 out.

20 THE COURT: I will do that.

21 MS. CHOI: Thank you very much.

22 THE COURT: You're calling a witness? Yes.

23 MS. CHOI: Yes, your Honor. But right before we call
24 the witness we just want to move in some evidence and then we
25 can call the witness, if that's okay?

H370LEB2

1 THE COURT: All right. Let's bring in the jury.

2 You had indicated yesterday that you were in agreement
3 as to the transcripts going back to the jury in addition to the
4 recordings and the like.

5 MR. NOBLE: Yes, your Honor.

6 THE COURT: Were you going to work on an instruction
7 of some kind?

8 MR. NOBLE: I believe there is an instruction already
9 in your Honor's jury instructions to say that the
10 transcripts were an aid.

11 MS. CHOI: For this list of exhibits, should we mark
12 it as a government exhibit or should we mark it as a court
13 exhibit?

14 THE COURT: It's marked for identification.

15 MS. CHOI: Okay. As Government Exhibit something?

16 THE COURT: Yes.

17 MR. CREIZMAN: Which exhibit?

18 MS. CHOI: This is just a list of exhibits we're going
19 to enter into the 700 and 800 series.

20 THE COURT: I'm sorry. I misunderstood.

21 MS. CHOI: I'm sorry.

22 THE COURT: But yes, you should mark that as a
23 Government Exhibit.

24 MS. CHOI: Okay. Exhibit 4020. They're basically
25 stipulated so --

H370LEB2

1 (Jury present)

2 THE COURT: Thank you very much, members of the jury.
3 You were here on time. We had a few matters to work through to
4 keep things moving as efficiently as we can, but I thank you
5 for your patience.

6 Ms. Choi, the government may call its next witness, or
7 I think you said you were going to --

8 MS. CHOI: Yes, your Honor. Before calling our next
9 witness, the government would like to offer certain other
10 exhibits into evidence.

11 THE COURT: Okay.

12 MS. CHOI: I'm showing what's been marked by the
13 government as 4020, which is a list of exhibits the parties
14 stipulate may be entered into evidence.

15 THE COURT: All right. In lieu of reading that list,
16 4020 -- without objection, counsel -- is admitted?

17 MS. MADRIGAL: Without objection.

18 MS. SANTILLO: No objection.

19 THE COURT: Thank you. 4020, which is the list of
20 stipulated-to exhibits, is admitted.

21 (Government's Exhibit 4020 received in evidence)

22 MS. CHOI: The governments also offers at this time
23 Government Exhibit 4013, which is a stipulation between the
24 parties concerning wire records of PNC Bank.

25 THE COURT: Without objection, 4013?

H37OLEB2

1 MR. KLINGEMAN: No objection.

2 MR. CREIZMAN: No objection.

3 THE COURT: Thank you. It is admitted.

4 (Government's Exhibit 4013 received in evidence)

5 MS. CHOI: Thank you, your Honor.

6 Finally, the government offers Government Exhibit
7 4014, another stipulation between the parties about Garrison,
8 New York being located in the Southern District of New York.

9 MR. CREIZMAN: No objection.

10 MR. KLINGEMAN: No objection.

11 THE COURT: Thank you. 4014 is admitted.

12 (Government's Exhibit 4014 received in evidence)

13 MS. CHOI: Thank you, your Honor.

14 At this time, the government would call Rose Linton to
15 the stand.

16 THE COURT: Thank you. Ms. Linton may come forward.

17 MR. SHIN: Your Honor, while the witness is entering
18 the courtroom, may I place a binder on the witness stand so she
19 can refer to it?

20 THE COURT: Yes.

21 ROSE LINTON,

22 called as a witness by the Government,

23 having been duly sworn, testified as follows:

24 THE WITNESS: Rose Linton. LINTON.

25 THE COURT: You may proceed, Mr. Shin.

H37OLEB2

Linton - Direct

1 MR. SHIN: Thank you, your Honor.

2 DIRECT EXAMINATION

3 BY MR. SHIN:

4 Q. Good morning, Ms. Linton.

5 A. Good morning.

6 Q. Just if you could, try to pull the microphone as close as
7 possible.

8 A. Okay.

9 Q. Thank you.

10 THE COURT: Mr. Shin, one moment. I did want to
11 indicate to the jury, as I have at other times, that sometimes
12 the lawyers, for scheduling matters, to move the case
13 efficiently and for other reasons, are in and out of the
14 courtroom, and again, I just want you to note that that's
15 perfectly normal and you shouldn't take that to mean anything
16 other than it's part of the process here. Thank you.

17 Go ahead, Mr. Shin.

18 MR. SHIN: Thank you, your Honor.

19 Q. Ms. Linton, where do you work?

20 A. I work for the Internal Revenue Service Criminal
21 Investigation Division.

22 Q. How long have you worked at IRS?

23 A. 14 years.

24 Q. Have you had the same job the entire time at IRS?

25 A. I have not.

H370LEB2

Linton - Direct

1 Q. Could you please describe for the jury the jobs you've had
2 at the IRS?

3 A. I started out at the Cincinnati Service Center doing
4 correspondence audits. Those were simple issues that could be
5 resolved through the mail.

6 From there I went to office audit where I worked for
7 five years doing face-to-face interviews with taxpayers and
8 small businesses. I also worked in the automated call center,
9 and we took calls from people that received notices in the
10 mail, tried to set up installment agreements and helped them
11 resolve issues with the Internal Revenue Service. From there I
12 was one with a revenue officer collection group. I was the
13 group secretary.

14 Next I went into the Criminal Investigation Division
15 side as a tax fraud investigative assistant. I did that
16 position for five years, and that is where I assisted special
17 agents in their research with search warrants and doing
18 interviews. While I've been in the tax fraud investigative
19 assistant position, I also did a six-month detail as an
20 investigative analyst, and that's where we review documents,
21 tax returns as they were filed, looking for false items so that
22 we could set up packages to send to the local field offices to
23 be worked by agents.

24 Also, a collateral duty while I was in that position
25 was as a field office court witness assistant, which is what I

H370LEB2

Linton - Direct

1 do now, only I do it now full time, and that's where we pull
2 the tax returns and any information filed by taxpayers, I
3 certify it that it is authentic documents presented in court
4 and then testify to it. And I got a full-time position as a
5 court witness coordinator in December of this past year.

6 Q. Now, Ms. Linton, before testifying today, did you have the
7 opportunity to review certain IRS records and documents to
8 prepare for your testimony?

9 A. I did.

10 Q. If you could take a look at the binder on your left, and if
11 you could flip through the documents that have been marked
12 Government Exhibits 601, 602 and 603. Please take whatever
13 time you need to flip through those documents to see if you
14 recognize them.

15 A. I recognize them.

16 Q. Are these the documents you reviewed in preparation for
17 your testimony today?

18 A. They are.

19 Q. Generally speaking, what do you recognize 601, 602, and 603
20 to be?

21 A. Exhibit 601 is account transcripts pulled based on the
22 taxpayer's social security number that gives a brief overview
23 of the account. Exhibit 602, those are information returns,
24 that's information that's processed from the payors in the
25 taxpayer's name. And Exhibit 603, those are the tax returns,

H37OLEB2

Linton - Direct

1 2013 through 2015 for the taxpayer.

2 Q. And who, if any, taxpayer do these particular documents
3 relate to?

4 A. Trevon Gross.

5 Q. Are these documents that the IRS created or logged at or
6 near the time of the events reflected in those documents, and
7 by someone with knowledge about them?

8 A. They are.

9 Q. And are these documents that the IRS keeps in the course of
10 its regularly conducted business activity of collecting taxes
11 and keeping records of taxes?

12 A. It is.

13 Q. And is it the regular practice of the IRS to make and
14 create these records or to keep these records?

15 A. It is.

16 Q. And are these documents in your binder fair and accurate
17 copies of the records that were retrieved from the IRS?

18 A. They are.

19 Q. And how did you confirm that they were fair and accurate
20 copies?

21 A. I logged into the different databases and researched based
22 on the taxpayer's name, social security number and tax year.

23 MR. SHIN: The government offers 601, 602, and 603
24 into evidence.

25 MR. KLINGEMAN: No objection.

H37OLEB2

Linton - Direct

1 THE COURT: Without objection?

2 MR. CREIZMAN: No objection.

3 THE COURT: Thank you. They're admitted.

4 (Government's Exhibits 601, 602, and 603 received in
5 evidence)

6 MR. SHIN: Ms. Grant, could you please publish for the
7 jury Government Exhibit 603?

8 BY MR. SHIN:

9 Q. Ms. Linton, you testified earlier that 603, they're the tax
10 returns for Trevon Gross for 2013, '14, and '15; is that
11 correct?

12 A. Correct.

13 MR. SHIN: Ms. Grant, could you please turn to page 12
14 of this document?

15 Q. Ms. Linton, what is the particular document that starts on
16 this page?

17 A. This is the front of the 1040, the initial page.

18 Q. And for what tax year?

19 A. For tax year 2014.

20 MR. SHIN: Ms. Grant, if you could just get the top
21 half, so maybe include just further down than where you had
22 been. Thank you.

23 Q. Ms. Linton, could you read line 7, please?

24 A. "Wages, salaries, tips, et cetera, attached forms W-2".

25 Q. And what's the amount listed there?

H37OLEB2

Linton - Direct

1 A. \$125,416.

2 Q. Ms. Linton, as you just noted, this tax return, it relates
3 to Trevon Gross, but is it only related to Trevon Gross?

4 A. He filed married filing joint, so it includes his wife, as
5 well.

6 Q. So we took a look at line 7. What, if any, documents
7 underlie the number \$125,416?

8 A. It would be from forms W-2.

9 MR. SHIN: Now, Ms. Grant, if you could turn to
10 page 26 of this document.

11 Q. Ms. Linton, these are pages 15 to 18 of the printout in
12 your binder, if that's easier for you to look at.

13 MR. SHIN: Ms. Grant, if you could just kind of page
14 through 26, 7, 8, and 9 of the document.

15 Q. So Ms. Linton, are these the W-2s that you referred to?

16 A. They are.

17 MR. SHIN: Ms. Grant, if you could go back to 26.

18 Q. Ms. Linton, just for the record, if you look at the screen
19 in front of you, could you please identify the payor and the
20 taxpayer for this particular W-2?

21 A. The payor is Hope Cathedral International, and it was paid
22 to Trevon Gross.

23 MR. SHIN: The next page, please, Ms. Grant.

24 THE WITNESS: This one is also Hope Cathedral
25 International, paid to Dionne Gross.

H37OLEB2

Linton - Direct

1 MR. SHIN: And the next page, please, Ms. Grant.

2 THE WITNESS: This document was, the payor is
3 Summerset Christian College, paid to Trevon Gross.

4 MR. SHIN: And the next page, please, Ms. Grant.

5 THE WITNESS: The payor is ADP Total Source Company,
6 paid to Dionne Gross.

7 BY MR. SHIN:

8 Q. Ms. Linton, apart from these four W-2s that we just looked
9 at and that you identified, were there any W-2s in the document
10 that are related to the 2014 tax year for Mr. Gross?

11 A. You mean in addition to these?

12 Q. Right, apart from these four.

13 A. Apart from these four, no, these were the only four.

14 Q. Just to be clear, did you identify in this set any W-2 from
15 a party known as the Collectables Club?

16 A. I did not.

17 Q. Or from an entity known as Kapcharge?

18 A. No.

19 Q. Before your testimony today, did you add up the wages that
20 were listed for each of these four W-2s?

21 A. I did.

22 Q. And did they add up to the number that we saw on line 7 of
23 the return?

24 A. They did.

25 MR. SHIN: Ms. Grant, if you could return to page 12

H370LEB2

Linton - Direct

1 of the PDF. If you could focus on the bottom half now.

2 Q. Ms. Linton, could you read line 21, please?

3 A. "Other income, list type and amount".

4 Q. And what is the amount listed there?

5 A. \$9,235.

6 MR. SHIN: Ms. Grant, if you could turn to page 22 of
7 this PDF now. Zoom in on that text.

8 Q. Ms. Linton, is this information that's related to that
9 amount that we just saw?

10 A. It is.

11 Q. So what type of income was this?

12 A. This was considered other income.

13 Q. And is there a particular description of this income here?

14 A. It was canceled debt income.

15 MR. SHIN: Ms. Grant, could you please publish
16 Exhibit 602? And if you could please turn to page 8 of this
17 PDF. Before we zoom in --

18 Q. Ms. Linton, what is this document that we're looking at
19 here?

20 A. This is an income information return that gets reported to
21 the Internal Revenue Service. It's any type of wages or
22 payments that you make out, as well. It gets reported, gets
23 keyed into the system by someone that is working with tax
24 returns and information coming in.

25 MR. SHIN: Ms. Grant, if you could zoom in on the

H370LEB2

Linton - Direct

1 bottom of the three entries there. Yes, that one.

2 Q. Does this correspond to the other income in the amount of
3 \$9,235 that we saw on the return?

4 A. It does. It's amount debt cancellation.

5 Q. What is the payor and what is the description of the income
6 listed for this document?

7 A. The payor is BMW Financial Services NA, LLC. Debt
8 description says "MV loan, amount debt cancellation, \$9,235".

9 MR. SHIN: You can take that down, please, Ms. Grant.
10 Could you please return to 603, page 12? And if you could zoom
11 in on the bottom half.

12 Q. Ms. Linton, could you please read the figure listed for
13 line 22 for "total income"?

14 A. The amount is \$134,651.

15 Q. Is that just the sum of lines 7 and 21?

16 A. It is.

17 Q. Based on your review of this return prior to your
18 testimony, is there any income reported on this tax return
19 other than the wages in line 7 based on the W-2s and we looked
20 at and the canceled debt income listed in line 21?

21 A. There is no other income.

22 MR. SHIN: Could you turn to the next page, please,
23 Ms. Grant? If you could just -- I'm sorry, the next page. If
24 you could just zoom in on the top half, please.

25 Q. Could you please read line 40 for "itemized deduction or

H37OLEB2

Linton - Direct

1 standard deduction"?

2 A. The amount is \$17,430.

3 Q. If you could just explain the basic -- what is a deduction?

4 A. Itemized deductions would be information filed on your
5 Schedule A. It can consist of mortgage interest paid, real
6 estate taxes, contributions; the items that you pay throughout
7 the year and you're entitled to a deduction to.

8 Q. So is the effect of a deduction that it reduces the income
9 that you have to pay taxes on?

10 A. It does.

11 Q. If you could read the amount in line 42, "exemptions".

12 A. The amount on line 42 is \$19,750.

13 Q. Does an exemption also reduce the total taxable income?

14 A. It does.

15 Q. So could you please read line 43 for taxable income?

16 A. The amount on line 43 is \$7,471.

17 MR. SHIN: Ms. Grant, if you could zoom in on the
18 bottom half of the document, please.

19 Q. Ms. Linton, if you could read line 63 for "total tax".

20 A. The amount is zero.

21 Q. And line 75 for the "amount that was overpaid"?

22 A. \$9,312.

23 Q. Is that the amount of the refund?

24 A. It is.

25 MR. SHIN: You can take that down, please, Ms. Grant.

H370LEB2

Linton - Direct

1 Q. Now, Ms. Linton, through your role at the IRS, have you
2 become familiar with instructions and publications that are
3 made available to taxpayers for use in completing their 1040
4 tax returns?

5 A. I have.

6 MR. SHIN: Ms. Grant, could you please show just for
7 the witness, the Court, and counsel Government Exhibit 608?

8 Q. Ms. Linton, do you recognize that document?

9 A. I do.

10 Q. What is it?

11 A. It's publication 525 "Taxable and non-taxable income for
12 use in preparing 2014 returns".

13 MR. SHIN: Ms. Grant, could you please turn to page 31
14 of the document? If you could zoom in in the middle column, in
15 the middle of the page, the section that says "Fees for
16 Services".

17 Q. Ms. Linton, could you just please read the section for
18 "Fees for Services"?

19 A. "Include all fees for your services in your income.
20 Examples of these fees are amounts you receive for services you
21 perform as a corporate director, an executor, administrator, or
22 personal representative of an estate, a manager of a trade or
23 business you operated before declaring Chapter 11 bankruptcy, a
24 notary public, or an election precinct official."

25 MR. SHIN: You can take that down, please, Ms. Grant.

H37OLEB2

Linton - Cross

1 No further questions, your Honor.

2 THE COURT: Thank you.

3 Mr. Creizman.

4 MR. CREIZMAN: No, your Honor, no questions.

5 THE COURT: Mr. Klingeman.

6 MR. KLINGEMAN: Thank you.

7 CROSS EXAMINATION

8 BY MR. KLINGEMAN:

9 Q. Good morning, ma'am.

10 A. Good morning.

11 Q. My name is Henry Klingeman and I represent the taxpayer.

12 A. All right.

13 Q. Do you still have that big binder in front of you?

14 A. I do.

15 Q. And you have the 1040s that the taxpayer submitted jointly
16 with his wife for 2013, '14, and '15?

17 A. Correct.

18 Q. Did those returns indicate whether the taxpayers used a
19 preparer to assist them?

20 A. Tax year 2013, he did use a paid preparer. There is a
21 signature on there with the information.

22 Q. How about '14?

23 A. Tax year 2014, there is also a paid preparer with the
24 information. And tax year 2015, there is also a paid preparer.

25 Q. Thank you for coming.

H37OLEB2

Rollins - Direct

1 MR. KLINGEMAN: No further questions.

2 THE COURT: Thank you.

3 Mr. Shin.

4 MR. SHIN: No redirect, your Honor.

5 THE COURT: Thank you.

6 Ms. Linton, you're excused. You may step down.

7 (Witness excused)

8 Government may call its next witness.

9 MR. NOBLE: Your Honor, the government calls John
10 Rollins.

11 THE COURT: Mr. Rollins may come forward.

12 JOHN ROLLINS,

13 called as a witness by the Government,

14 having been duly sworn, testified as follows:

15 THE WITNESS: John Rollins. JOHN, ROLLINS.

16 THE COURT: When you're ready, Mr. Noble.

17 MR. NOBLE: Thank you, Judge.

18 DIRECT EXAMINATION

19 BY MR. NOBLE:

20 Q. Good morning, Mr. Rollins.

21 A. Good morning.

22 Q. Where do you work?

23 A. Currently I work at a firm called RSM US, LLP.

24 Q. Mr. Rollins, if you can make sure that you speak directly
25 into the microphone just so that everyone can hear you. Thank

H37OLEB2

Rollins - Direct

1 you.

2 What is RSM?

3 A. RSM is an audit tax and consulting firm.

4 Q. And what is your title there?

5 A. My title is a director, and I also am the practice leader
6 for the dispute advisory practice in the Northeast region.

7 Q. How long have you worked for RSM?

8 A. Approximately six years.

9 Q. And what are your general responsibilities there?

10 A. Generally, it's to lead and generate new work, including
11 investigations, as well as assisting counsel on matters
12 involving disputes in litigation.

13 Q. And what specifically do you consult on in terms of the
14 matters you work on for various parties?

15 A. It's a combination of both assisting counsel that are
16 representing parties in litigation, as well as performing
17 forensic investigations and other types of matters.

18 Q. Is it generally financial?

19 A. Generally financial accounting, economics based.

20 Q. Can you describe your educational background for the jury?

21 A. Sure. I studied undergrad at Georgetown University, and I
22 majored in linguistics, psychology, and studied business
23 finance, and then I studied for my MBA at the New York
24 University.

25 Q. And what year did you graduate from NYU?

H37OLEB2

Rollins - Direct

1 A. NYU was 2016 and Georgetown was 2001.

2 Q. What jobs have you held since graduating from Georgetown?

3 A. When I left undergrad, I started off working at Thompson
4 Financial, which was a financial news and information
5 organization, as a financial analyst. Was there for about two
6 and a half years. Then I moved on to a firm called LECG, which
7 was a boutique litigation consulting and economic consulting
8 firm.

9 Q. And then you moved to RSM in 2011?

10 A. Then in 2011 I moved on to RSM.

11 Q. What, if any, professional certifications do you have?

12 A. I have a variety. The first one is referred to as an ASA,
13 it's accredited senior appraiser. It's a credential for a
14 valuation specialist.

15 Second one is CFE, which is certified fraud examiner
16 credential.

17 A third one is C-A-M-S, CAMS, which is certified anti
18 money laundering specialist.

19 Then a final one is MAFF, which is the master analyst
20 in financial forensics.

21 Q. Have you ever testified in court before?

22 A. I have not, no.

23 Q. Have you ever been deposed under oath?

24 A. I have, yes.

25 Q. How many times?

H370LEB2

Rollins - Direct

1 A. Three times.

2 Q. Were those criminal or civil matters?

3 A. Those were all civil matters.

4 Q. Did you testify on behalf of private clients or the
5 government in those matters?

6 A. A combination; so two of the matters I was testifying on
7 behalf of private clients, and then one was for the government.

8 Q. And were the private clients on the plaintiff's side or the
9 defendant's side?

10 A. In both cases they were on the defense side, although in
11 one of the matters there were counterclaims back.

12 Q. Now, did there come a time when you were asked to examine
13 certain financial records in connection with an investigation
14 of Coin.mx and HOPE Federal Credit Union?

15 A. Yes.

16 Q. Who asked you to do that?

17 A. Attorneys at the U.S. Attorney's Office.

18 Q. What were you asked to do with respect to those records?

19 A. Generally, I was asked to review the financial records and
20 then perform an analysis to identify the sources and uses of
21 funds in relation to particular deposits that were made into
22 those accounts that were pointed out to me by counsel.

23 Q. Who provided you with the directions for your analysis?

24 A. In terms of identifying the specific transfers to analyze,
25 that was counsel at the U.S. Attorney's Office.

H370LEB2

Rollins - Direct

1 Q. Counsel for the government?

2 A. Yes.

3 Q. Did you work on that analysis by yourself or with others?

4 A. No, I had a team of folks helping me at RSM.

5 Q. Approximately how many people were helping you on your
6 team?

7 A. A core group of probably about three or four people, and
8 occasionally I'd ask some folks to help with various tasks, but
9 generally speaking it was about three or four people that
10 helped me.

11 Q. Since approximately when have you and your team been
12 working on that analysis?

13 A. I believe it was since September of 2016.

14 Q. Now, did there come a time during the course of your
15 analysis when you requested additional records from the
16 government?

17 A. There were a number of different points, including at the
18 beginning when we began the work, we submitted a formal
19 document request list to ask for specific information that we
20 thought might be there, which included bank statements and
21 account opening and closing documents and things like that.

22 And then additionally, as the course of the
23 investigation and the work that we were doing ensued, I would
24 go back and forth asking for additional documents where I
25 thought it would be helpful.

H370LEB2

Rollins - Direct

1 Q. Can you describe how you went about analyzing the various
2 records that you reviewed?

3 A. Sure. So generally speaking, I started with the bank
4 statements for the various accounts that had the deposits that
5 counsel asked me to look at and proceeded to first identify
6 where those deposits were actually reported on the statements,
7 and then I proceeded to look through the uses of funds that
8 followed those deposits.

9 Q. Now, is RSM being compensated for the analysis that have
10 been performed in this case?

11 A. They are, yes.

12 Q. Who is compensating RSM?

13 A. I believe it's the U.S. Government.

14 Q. And approximately how much has RSM billed the government to
15 date?

16 A. Approximately 240, \$250,000, I believe.

17 MR. NOBLE: Can we bring up just for the witness and
18 counsel and the Court what's been marked Government
19 Exhibit 900 for identification?

20 Q. Mr. Rollins, do you see that on your screen?

21 A. I do, yes.

22 Q. Do you recognize what this is?

23 A. Yes.

24 Q. What is it?

25 A. It appears to be the cover page of a set of exhibits that

H37OLEB2

Rollins - Direct

1 I've prepared for today.

2 Q. Would these exhibits assist you in your testimony today?

3 A. Yes.

4 Q. Did you use your analysis of the various bank records and
5 other records that the government provided to you to prepare
6 these slides?

7 A. Yes, I did.

8 MR. NOBLE: Your Honor, at this time the government
9 would offer as a summary exhibit Government Exhibit 900,
10 subject to the parties' and the Court's previous agreement
11 pursuant to Rule 1006 of the Federal Rules of Evidence.

12 MS. MADRIGAL: No objection.

13 MR. KLINGEMAN: Our objections have been noted.

14 THE COURT: Okay. We'll do them a page at a time?

15 MR. NOBLE: Yes. Pages in chunks, your Honor.

16 THE COURT: Okay. So 900-1 is admitted.

17 MR. NOBLE: Thank you, Judge. I believe we'd like to
18 go all the way to page 7. I don't think there's an objection
19 to those pages.

20 THE COURT: That's correct. So 1 through 7 are
21 admitted. 1 through 6. One through 6 are admitted.

22 (Government's Exhibits 900-1 through 900-6 received in
23 evidence)

24 MR. NOBLE: If we could publish just page 1 for the
25 jury. Let's flip to slide number 2.

H37OLEB2

Rollins - Direct

1 BY MR. NOBLE:

2 Q. Mr. Rollins, could you just provide the jury with an
3 overview of the presentation that you've prepared?

4 A. Sure. So what I prepared to speak with everyone about is
5 the sources and uses analysis. So I first provided an
6 overview, then I go into some details about the methodology I
7 employed in order to do the analysis, and then I go into
8 talking about each of the specific deposits that I was asked to
9 look at. I've listed the accounts that are involved in those
10 deposits. Then I was asked by counsel to perform an additional
11 analysis related to bank account activity involving a series of
12 bank accounts related to Coin.mx. Then I was asked to perform
13 an analysis looking at the location of payments and expenses
14 that were performed, both with respect to the accounts related
15 to Trevon Gross and accounts related to Anthony Murgio.

16 MR. NOBLE: Let's go to the next slide.

17 Q. Just generally, can you explain to the jury what your
18 analysis entailed in terms of the sources and uses analysis?

19 A. Sure. Generally, within any sort of bank statement or
20 credit card statement, as you know, there's sources of funds.
21 So those are deposits into a bank account or payments on credit
22 cards.

23 Then there's uses of funds, which are either credit
24 card expenses or debit card purchases or transfers to other
25 accounts or to other people, and those are considered uses of

H37OLEB2

Rollins - Direct

1 the funds.

2 MR. NOBLE: Let's go to the next slide, slide 4.

3 Q. What transactions did the government ask you to analyze in
4 particular?

5 A. So the government asked me to analyze ten different
6 transactions, and what I've done here is provided a summary of
7 information about those transactions.

8 In the column labeled "Amounts" you can see the
9 amounts of those transfers into those accounts. And then in
10 the column labeled "Account Name" you can see which accounts
11 those were deposited into.

12 Q. Can you just walk the jury through the various columns that
13 are depicted on this chart?

14 A. Sure. The first column is labeled "Transfer Reference".
15 So what I've done is I've simply numbered the transfers in
16 order from 1 to 10, and then in parenthesis I provided
17 information about the type of transfers. So within a bank
18 account there's multiple types of ways to deposit money. One,
19 for example, could be to go to an ATM and deposit money, one
20 could be to get a transfer from somebody else, from somebody
21 else's account.

22 Transfers of that type will sometimes be either a
23 Fedwire, which is a type of transfer on an ACH transaction,
24 which is another type of transfer from another account, and
25 then there's two different types of transfers at the HOPE FCU

H37OLEB2

Rollins - Direct

1 bank accounts called a phone transfer or member transfer, and
2 that's a transfer between different accounts held all at the
3 same banking institution.

4 Q. All of that information is reflected in the bank records
5 that you analyzed; is that right?

6 A. That's correct.

7 Q. Then go ahead and continue.

8 A. And then the second column "Account Name", again, that
9 provides the name of the account into which these deposits were
10 made. So you'll see there's a series of accounts that
11 references Hope Cathedral International operating account. So
12 several of the transactions involved deposits into that
13 account. And then you'll see the last three transfers involved
14 accounts held by HOPE FCU, the bank.

15 Q. And then?

16 A. And then the next column is the financial institution. So
17 that's the name of the bank or other financial institution at
18 which the accounts were held. So some of the accounts were
19 held at PNC Bank, some were held at HOPE FCU Federal Credit
20 Union, some were held at United Advantage Federal Credit Union,
21 and some were held at the Lakeland Bank, which was referred to
22 as Harmony Bank at the time the transfers were made, but now
23 it's Lakeland Bank.

24 And then the next column I have the "Account Numbers".
25 So these are the ending digits of the accounts into which the

H37OLEB2

Rollins - Direct

1 deposits were made.

2 And then I have a column that has the "Date of the
3 Transactions". So these are the dates of those deposits.

4 Again, the "Amount", which I've referenced earlier in
5 the next column.

6 And then the column following that "Received from
7 Counterparty". So within the bank records there's information
8 provided that identifies who sent the funds, and these are the
9 entities that were referenced.

10 And then the next column I've provided information
11 about the balance within the accounts into which the deposits
12 were made just prior to those deposits going into the account,
13 and then finally, I provided a "Source Column".

14 Q. And the sources refer to the underlying records that you
15 reviewed; is that correct?

16 A. Those refer to the underlying bank statement.

17 Q. Can you just walk the jury through the ten different
18 payments, the date and the amount that you analyzed?

19 A. Sure. So the first transfer, as you can see, was on
20 May 9th of 2014, and it was for an amount of \$15,000.

21 The second transfer was dated May 21st, 2014 and it
22 was again for \$15,000.

23 The third transfer, an ACH transfer dated June 23rd,
24 2014, and that was for \$120,000.

25 And then transfer 4 dated August 22nd, 2014, and that

H37OLEB2

Rollins - Direct

1 was for \$3,500.

2 And all of the first four transfers, as you can see,
3 were deposited into the PNC Bank account held by Hope Cathedral
4 International.

5 Transfers 5 through 6 were all made to the Hope
6 Cathedral account at HOPE FCU.

7 The first one, transfer 5, is dated October 6, 2014
8 and for the amount of \$1,500.

9 Transfer 6 is October 7th, 2014, and that's for
10 \$3,000.

11 Transfer 7 is for \$6,000, and it was dated
12 November 24th, 2014.

13 The next transfer, transfer 8, which is dated
14 December 2nd, 2014, was for \$50,000. And as I'll discuss
15 later, that amount was returned back to the sender, which is
16 where you see in the left most column it says "returned".

17 Then the final two transfers were made to the HOPE FCU
18 account held at Lakeland Bank, and those amounts were for
19 \$50,000 and \$30,000 with the dates May 5th, 2015 and
20 October 9th, 2015 respectively.

21 MR. NOBLE: Let's go to the next slide.

22 Q. Mr. Rollins, can you just walk the jury through your basic
23 approach to how you went about analyzing the source and the use
24 of these various transactions?

25 A. Right. So again, I started with the bank statements for

H370LEB2

Rollins - Direct

1 the accounts into which these transfers were deposited and
2 looked as to who the counterparty bank and counterparty entity
3 was identified as in those bank records for the incoming
4 transfers, and to identify the source of the funds.

5 And then for the uses of funds, I proceeded to look at
6 how funds were spent following those deposits, and generally
7 speaking, there were a variety of different categories or types
8 of uses of funds, and I've listed those on slide 5, the first
9 of which is "Transfers to Other Accounts".

10 So out of the operating account at PNC Bank, I
11 identified uses where funds were being transferred to other
12 accounts. So, for example, the payroll account, there was a
13 bookstore account, and the Steadfast Ministries account. Those
14 transfers then I continued to trace on further to identify the
15 uses of funds that were transferred into those accounts based
16 off of records that I had for them.

17 The next set includes withdrawals, checks, debit card
18 and loan payments. So these I refer to largely as direct
19 payments out of the accounts.

20 And then the last are a series of payments that were
21 made from the bank accounts to pay off balances in various
22 credit cards. And for those, I've again gone further to trace
23 to see what purchases those payments can be connected to.

24 (Continued on next page)
25

H37KLEB3

Rollins - direct

1 BY MR. NOBLE:

2 Q. Let's turn to page 6.

3 What's summarized in this chart?

4 A. So this chart is similar to the chart we looked at before,
5 but, in this case, what I've done is I've provided information
6 about the bank accounts themselves and about the periods of
7 time for which I had bank statement records available. So
8 you'll see that in the first column, I've identified the
9 account names, second is the financial institutions, third is
10 the account number, and then the fourth and fifth columns
11 provide the date range for which I had records. Then I have a
12 source column, so those are the sources of the bank statements
13 themselves.

14 And then in the final two columns, what I've done is
15 I've provided information from the account-opening and closing
16 documents that I had available listing who was listed as either
17 an account signer, or the credit card owner, or the owner of
18 the account.

19 Q. Directing your attention to the bottom four rows. What's
20 depicted on those rows?

21 A. So, in addition to the bank accounts at the top of the
22 chart, as I mentioned on the last slide, some of the funds that
23 were deposited into these accounts were then used to make
24 payments off of credit cards, and these included the credit
25 cards listed at the bottom of the chart.

H37KLEB3

Rollins - direct

1 Q. And then just focusing your attention on the column titled
2 "Account Signer Credit Card Holder," what did you observe with
3 respect to whether Trevon Gross was a signer on any of the
4 accounts that you were looking at?

5 A. So, for the accounts for which I had account-opening and
6 closing information, I found Trevon Gross listed on the Hope
7 Cathedral PNC account, the Hope Cathedral payroll account at
8 PNC, the HOPE FCU member account at United Advantage, and then
9 all four of the credit card accounts listed at the bottom of
10 the chart.

11 Q. And then for the entry rows number 3, 4, and 5, there's
12 nothing in those boxes for account signer or sources. Can you
13 explain why?

14 A. Yeah, that's correct. I didn't have access to
15 account-opening documents for those accounts.

16 MR. NOBLE: You can take that down for a moment.

17 Q. Mr. Rollins, after you were asked by the government to
18 analyze these various transactions, and you received the
19 records, how did you go about conducting your analysis of how
20 the funds were used after you identified the sources?

21 A. So, again, I went to the bank statements themselves, or the
22 credit card statements, and identified payments and other
23 transfers out of the account that occurred after those
24 deposits.

25 Q. Was there any type of methodology or assumption that you

H37KLEB3

Rollins - direct

1 used, for example, to determine what money was used, what
2 deposits were used to pay for certain expenses?

3 A. Yes.

4 MR. KLINGEMAN: Objection.

5 THE COURT: Overruled. We'll see where it goes.

6 Go ahead. You may answer.

7 THE WITNESS: Yes, I -- yes.

8 BY MR. NOBLE:

9 Q. What was the assumption that you used in conducting your
10 analysis?

11 A. I used an assumption for most of the accounts called
12 first-in, first-out, or FIFO.

13 Q. Okay. How did you choose that account -- I mean that
14 methodology?

15 A. I chose it both in discussions with counsel, but from a --
16 in thinking about how most people handle their finances, and
17 look at your bank statements, and how you make payments out of
18 your bank accounts intuitively, first-in, first-out makes
19 sense.

20 MR. KLINGEMAN: Objection.

21 THE COURT: Overruled.

22 Q. Is there a difference when you apply the first-in,
23 first-out methodology to a bank account analysis versus a
24 credit card analysis?

25 A. Yes, there is. And that's just from the way information is

H37KLEB3

Rollins - direct

1 presented on those two account statements.

2 Q. On the documents themselves?

3 A. On the documents themselves. So, in the sense of a bank
4 account, typically, money is deposited into the account, and
5 then there is outflows or withdrawals from the account from
6 that balance. On the other hand, on a credit card statement,
7 typically what happens is, you make the purchases, and then you
8 pay the balance in the account after you've already made the
9 purchases. So, in that case, the sources will appear after the
10 uses.

11 Q. To be clear, are there other assumptions or methodologies
12 that you could have applied?

13 A. Yeah, there are. So, for example, the base methodology
14 would be something to the effect that you can identify the
15 specific outflows or withdrawals that match up to specific
16 deposits. But if you think about a bank account, typically
17 what happens is that you have a series of deposits in different
18 amounts, and for most people -- for myself, for example -- most
19 of the money that I deposit --

20 MR. KLINGEMAN: Objection.

21 Q. Can you perhaps --

22 THE COURT: Are you withdrawing that?

23 MR. NOBLE: I'll withdraw.

24 THE COURT: Go ahead.

25 Q. Can you just limit your responses to the particular bank

H37KLEB3

Rollins - direct

1 statements that you reviewed in this case --

2 A. Sure.

3 Q. -- in terms of explaining how the FIFO methodology works
4 with respect to those bank statements?

5 A. Sure. So, for example, in the bank accounts that I
6 analyzed, there were a series of different deposits of
7 different amounts, and then there were a series of withdrawals
8 and other uses of funds in amounts that didn't always line up
9 exactly with the amounts of the deposit. So, for example, one
10 of the deposits I was asked to analyze the sources and uses for
11 is for \$120,000. Within the bank statement following that
12 deposit, there were a series of withdrawals and uses of funds,
13 but nothing of the exact amount of \$120,000. There was a
14 series of withdrawals of various smaller amounts that would add
15 up to \$120,000.

16 Q. I asked you earlier about other methodologies that could
17 have been used or assumptions that could have been made.

18 A. Right.

19 Q. What's your example of another assumption?

20 A. So, again, the first example that I was explaining was, if
21 there was a deposit of, say, \$120,000 into that account,
22 following that, if there was a withdrawal of \$120,000, you
23 might be able to say that -- specifically identify that use as
24 being connected to the source of funds, but since in this case,
25 the withdrawals were of smaller amounts following that deposit,

H37KLEB3

Rollins - direct

1 that methodology was impossible.

2 So, in this case, what I used was the first-in,
3 first-out methodology. An alternative method could have been
4 what's referred to as the last-in, first-out methodology. So
5 in that case, if you have a series of deposits into a bank
6 account, you withdraw from the most recent deposit in tracing
7 out funds, as opposed to in the FIFO methodology, where you
8 draw from the earliest or the oldest deposit. So you draw from
9 the cash that's been sitting in the account longest when you're
10 tracing out.

11 Q. You testified earlier that you based that assumption, in
12 part, upon conversations with counsel for the government; is
13 that right?

14 A. That's correct.

15 Q. What was decided in those conversations?

16 A. So we discussed the different methodologies that you could
17 use to apply --

18 MR. KLINGEMAN: Objection.

19 THE COURT: Overruled. See where it goes.

20 THE WITNESS: -- and we discussed that -- specifically
21 the LIFO methodology, and the FIFO methodology, and the reasons
22 why the specific identification methodology wasn't possible,
23 and based on the discussions, it was determined that the FIFO
24 was the methodology that counsel asked me to use.

25 Q. Counsel asked you just to apply the FIFO methodology?

H37KLEB3

Rollins - direct

1 A. That's correct.

2 Q. Is that the methodology that you used to conduct your
3 analysis?

4 A. That is, yes.

5 Q. So that's the general underlying assumption that applies to
6 your analysis of the bank records in this case?

7 A. Yes, that is.

8 Q. Is that something that you could show to the jury in the
9 bank statements themselves, if I asked you to?

10 A. That's something I could show to the jury, yes.

11 MR. NOBLE: Your Honor, at this time, the government
12 would seek to introduce the remaining slides.

13 MR. KLINGEMAN: Objection.

14 MS. MADRIGAL: No objection.

15 THE COURT: I'm going to give the jury a short break,
16 and it's slightly earlier than we normally do, but it will be a
17 short break, about ten minutes.

18 (Continued on next page)

19

20

21

22

23

24

25

H37KLEB3

Rollins - direct

1 (Jury not present)

2 THE COURT: You may step down and outside the
3 courtroom for the break, please. Thank you.

4 (Witness temporarily excused)

5 THE COURT: I need to take a two-minute break and
6 return in two minutes.

7 (Recess)

8 MR. KLINGEMAN: Your Honor, if I could supplement my
9 objection based on the testimony, perhaps we'll be more
10 focused.

11 THE COURT: Well, I'm focused. The difficulty is -- I
12 have two competing concerns. The testimony didn't come out as
13 predicted, so what the witness -- or as proffered, anticipated.
14 As to the selection of the method, what the witness said was
15 that he described it as what counsel suggested, and then he
16 added that it's what sort of makes sense, which, given his
17 expert background, suggests a vouching for a particular
18 methodology, and then when he specifically discussed counsel
19 giving it to him, he described it as in the course of a
20 colloquy and a conversation. So it's not just a plug-and-play.
21 He testified to his qualifications. It adds a level of
22 vouching to the methodology selected. I think that's true.

23 The test is something close to a waiver issue, which
24 is, this is what should have been anticipated when this witness
25 was noticed as a summary witness and these slides were

H37KLEB3

Rollins - direct

1 provided, which just, hearing it now, causes a problem. And
2 the absence of any specific suggestion that there is some
3 competing analogy -- you read Judge Forrest's decision -- the
4 concern was that it was disputed which methodology would be
5 better. There's nothing here, just a hypothetical possibility
6 that because there are different methodologies that could be
7 chosen, that it somehow is unfair.

8 My basic view is, this is helpful testimony and
9 nonprejudicial, but this is an expert providing summary
10 testimony, and I am concerned, in light of how the testimony
11 came in, that it is a 701 problem.

12 MR. NOBLE: Well, Judge, he testified that there are
13 different methodologies, that this one seemed to make sense.

14 THE COURT: Which is, with his credentials, vouching
15 for this methodology.

16 MR. NOBLE: But we discussed it with counsel. I can
17 make it clear that the government -- we instructed him, apply
18 FIFO, because we discussed the various methodologies, and this
19 is the assumption.

20 And, Judge --

21 THE COURT: That was not --

22 MR. NOBLE: But he did say that. And he did say --

23 THE COURT: Yes, you cleaned up with a leading
24 question, but his answer during the testimony was, we discussed
25 it. So it sounded like what do you think would be the best

H37KLEB3

Rollins - direct

1 methodology, here's what I think would be the best methodology,
2 okay, apply that methodology.

3 MR. NOBLE: The government said apply this
4 methodology, that's the key point. Because, Judge, if I can
5 just -- a little indulgence.

6 THE COURT: Absolutely. Go ahead.

7 MR. NOBLE: If you take that assumption that has been
8 applied, defense counsel could cross-examine about that
9 assumption, whether it's appropriate or not, whether a
10 different assumption would result in a different analysis,
11 et cetera. But if you take that assumption, all he's doing is
12 testifying to the facts of based upon the bank records. So if
13 you assume FIFO, and you look at the bank records, here is my
14 summary of what you see, and that's what he's testifying to the
15 jury.

16 So what the jury can do in the deliberation room is
17 they can take that assumption, and they can look at the bank
18 records themselves and see, is what this person told me
19 accurately summarizing the results that you get when you look
20 at the bank records. And that's all he's doing. It's factual
21 testimony. He's not opining that this is the best way to do
22 it. He's opining --

23 THE COURT: He did.

24 MR. NOBLE: No, but he says this makes sense. I think
25 that's fair, but then we're saying -- and I can make it even

H37KLEB3

Rollins - direct

1 clearer -- that this is an assumption that you applied, there
2 are other assumptions that you could have applied, but based on
3 that assumption, can you walk us through what you found when
4 you looked at the bank records, can you walk us through your
5 summary of the transactions, the sources, and how they were
6 used.

7 In large part, it would not make a difference because
8 if you look at slide 4, where we list the balances of the
9 accounts before the transfers go in, the balances in most of
10 the accounts are so small compared to the amount of the
11 transaction that comes in, that it doesn't really make a
12 difference as to which -- like if you choose LIFO versus FIFO.

13 I wasn't going to get into that, I think that's fair
14 game on cross, but I wasn't going to get into that with him.
15 You take the assumption, applying that assumption by looking at
16 the records, what do you get? Here are the facts. And the
17 jury can say, that's helpful or it's not helpful, we shouldn't
18 apply that assumption, we should apply that assumption. They
19 can make that determination for themselves.

20 So this is helpful testimony, and it's based on a
21 pure, cold analysis of the record applying this assumption.
22 It's factual, it's lay, it's --

23 THE COURT: It's not -- I'm sorry, Mr. Noble. I'm
24 trying, because I'm deeply frustrated with how we're here and
25 why we're here now, but it's not lay. It's not. And you

H37KLEB3

Rollins - direct

1 analogize it to what is frequently seen in cases where
2 investigators come and do a tracing analysis.

3 MR. NOBLE: Yeah, as lay witnesses.

4 THE COURT: But it's based on percipient knowledge and
5 not -- yes, it is, it frequently is, that you have people who
6 this is what they do or did in this investigation. Again, my
7 concern is testimony is not as you proffered it. I was
8 prepared -- I'm not saying you misled in any way, I'm just
9 saying it didn't play out as you had predicted, and I'm
10 concerned. I'm concerned that there is a 701 issue, and you
11 may not, through summary witnesses, provide expert testimony.

12 MR. NOBLE: Agreed, your Honor, a hundred percent.

13 THE COURT: That's the law.

14 MR. NOBLE: Agreed. But I guess I take objection to
15 this depiction of this as an expert witness, because he did
16 testify that he had conversations with counsel, he explained to
17 us the different methodologies, he said this one makes sense --

18 THE COURT: Have you ever worked with an expert
19 witness?

20 MR. NOBLE: Have I?

21 THE COURT: Yes.

22 MR. NOBLE: Yes, your Honor.

23 THE COURT: Any different than what happened here?

24 MR. NOBLE: Oh, absolutely. Because he's just taking
25 one assumption -- an assumption about, you know, one

H37KLEB3

Rollins - direct

1 methodology, and then he applies it to the cold record to --

2 THE COURT: Again, you're ignoring the testimony. You
3 are ignoring the testimony. The testimony was, I picked this
4 assumption, there are others, but I picked this one, because in
5 discussions with counsel -- well, first, he started by saying,
6 counsel suggested it, and it's what makes sense, it's what --
7 it's how I think about my -- I think he said his credit card
8 accounts, his bank accounts.

9 MR. NOBLE: He was talking about his personal bank
10 accounts, which we struck.

11 THE COURT: Before that, though, when he talked
12 about -- I didn't sustain the objection, he talked about it
13 being consistent with what he thinks made sense because it's
14 essentially how he goes about thinking about it, looking at it,
15 and the like. I'm not recalling exactly. But then asked --
16 yes, you cleaned up the end, but before you got to that, how
17 did you come to it, I had discussions with counsel, and the
18 inference was, I explained that this was the method that makes
19 the most sense, and so that's what we came to. And then you
20 said, and counsel told you to apply it? Yes.

21 MR. NOBLE: I can clean that up. I can say it again
22 and make it very clear to the jury that, you know, yes, we had
23 discussions, he explained different options, mostly FIFO and
24 LIFO, and we said, choose FIFO.

25 Judge, just going back to the notice point, they have

H37KLEB3

Rollins - direct

1 had these for over two weeks.

2 THE COURT: I'm hundred percent with you on the notice
3 point. In my view, the objection, which is decidedly not made,
4 is that this is expert testimony. The whole thing, it's not
5 just this particular piece. I'm not saying the whole thing is,
6 I'm saying that in the course of testimony with this person's
7 credentials and the process that they used, it's an expert
8 providing summary testimony and in what's been identified for
9 objection purposes, it's not simply summary.

10 MR. NOBLE: Well, Judge, I think it seems to me that
11 your Honor's concern is about the choice of FIFO versus another
12 methodology in terms of that being an expert opinion or not,
13 because once you make the assumption, then the application to
14 the bank records, it is what it is. You take that methodology,
15 and you apply it, here are the facts, this is what I saw in the
16 bank records, right?

17 So, to the extent that your Honor believes that it
18 requires an expert to make the decision that there is some
19 leeway in the decision-making, some discretion that was left to
20 this witness to decide whether to do it, and he's proffered
21 testimony to that, I could clean that up to make it clear that
22 this is an assumption that the government enforced upon him, to
23 do it this way, or alternatively, we could seek to qualify him
24 as an expert. He's obviously qualified to opine on these
25 things. I can elicit more, I can lay a further foundation, we

H37KLEB3

Rollins - direct

1 can bring him in to do a colloquy outside the presence of the
2 jury to qualify him, because, Judge, at this point, the
3 government would be severely prejudiced if we're not able to
4 present this evidence. And we think there's a good-faith basis
5 that this is not expert opinion. It's been admitted -- tracing
6 analyses have been admitted in other cases.

7 THE COURT: Can you cite me any case, any authority?

8 MR. NOBLE: We did it in --

9 THE COURT: Any case, any authority -- it's a genuine
10 question -- for the use of an accounting expert to do summary
11 exhibits that includes application of an accounting method
12 where there are options for others.

13 MR. NOBLE: Well, Judge, I can't cite you a specific
14 case --

15 THE COURT: Or something comparable.

16 MR. NOBLE: -- but I can cite you, for example, in the
17 Zemlyansky matter before Judge Oetken and Danilovich before
18 Judge Oetken, we had a retired FBI agent who now works in the
19 FBI as a forfeiture analyst. He took the stand to do the money
20 laundering tracing of where the money went, and then how it got
21 into the bank accounts of the defendants, and how those
22 proceeds were spent out of the bank accounts. And inherent in
23 that were assumptions about what money, what sources were used
24 for what uses. And he testified to that as a lay witness
25 before Judge Oetken in multiple trials.

H37KLEB3

Rollins - direct

1 So that's one example --

2 THE COURT: Was that over objection?

3 MR. NOBLE: No, there was no objection. Mr. Creizman
4 was there.

5 MR. CREIZMAN: I was. I can tell you about some
6 other --

7 MR. NOBLE: And they haven't objected to this either,
8 your Honor.

9 THE COURT: I'm not dealing with their lack of
10 objection, I'm dealing with an objection, which I'm frustrated,
11 deeply frustrated.

12 MR. NOBLE: Judge, I can also cite you a case from the
13 Eleventh Circuit, if I can find my notes. I know it's not
14 Second Circuit, but there is an example of a similar situation
15 where an FBI analyst, it may have been an investigator from the
16 case, took the stand to do a bank account analysis and a
17 tracing analysis, and it was upheld on appeal as pure summary
18 testimony. It's a published Eleventh Circuit case.

19 THE COURT: What can you do now? Is there a way to
20 skip --

21 MR. NOBLE: Judge, this is --

22 THE COURT: I understand your arguments. I'm asking
23 whether there is a way at this point to not have the jury
24 sitting idly. It's not your fault that we're dealing with it
25 while the jury is sitting idly.

H37KLEB3

Rollins - direct

1 MR. NOBLE: Sure.

2 THE COURT: It's Mr. Klingeman's fault.

3 MR. NOBLE: We can seek to qualify him as an expert.

4 If that's the concern, we'll qualify him as an expert, defense
5 counsel can ask him any questions to try to probe whether he
6 should be qualified as an expert, and then there will be no
7 problem, if your Honor believes that his opinion that the FIFO
8 methodology is the best methodology to be applied injects some
9 expert testimony into what would otherwise just be summary
10 testimony.

11 THE COURT: Mr. Klingeman?

12 MR. KLINGEMAN: Your Honor, the witness did testify
13 about the appropriate --

14 THE COURT: Respond, please, to the suggestion of
15 seeing if he can be qualified as an expert.

16 MR. KLINGEMAN: We object to him testifying as an
17 expert. There was no notice, and I didn't waive my right to
18 object by moving -- by requesting pretrial for notice that we
19 never got. And I have --

20 THE COURT: When you say never?

21 MR. KLINGEMAN: I have made a specific objection to an
22 aspect of this testimony and this document. I haven't
23 objected, I haven't laid in wait, and I haven't waived my
24 objection. What I have done --

25 THE COURT: Well, I'm not saying it was strategic, but

H37KLEB3

Rollins - direct

1 this could have been anticipated when you received these
2 materials and were informed that this witness would be
3 providing summary testimony.

4 MR. KLINGEMAN: And we did object.

5 THE COURT: This morning.

6 MR. KLINGEMAN: No. Days ago, we addressed this with
7 the government. And we worked very carefully to try and narrow
8 the objection to the simple issue. And if I could just have
9 the opportunity, now that we've heard the witness' testimony,
10 to explain the objection, I think it will be far clearer why
11 the objection is meritorious and how we can, nonetheless,
12 accommodate the government's need for this evidence. This is
13 not a crisis.

14 The witness testified, essentially --

15 THE COURT: I have a jury sitting idly. It's not a
16 crisis, but it's a waste of time.

17 MR. KLINGEMAN: I haven't had a chance to say a word.

18 THE COURT: I'm going to give you a chance. I don't
19 appreciate the description of my taking an objection seriously
20 and looking for a solution as a crisis. Proceed.

21 MR. KLINGEMAN: I'm referring to the government's
22 rhetoric about the position this might put them in. They're
23 suggesting this is some kind of critical rupture in the
24 presentation, and I have a proposal, a proposal I've already
25 made -- I made it to them, and I made it again this morning to

H37KLEB3

Rollins - direct

1 your Honor -- to get through this, so that they can use
2 90 percent of what they're trying to do. All I'm asking is an
3 opportunity to make that proffer.

4 This witness testified that there are, in fact, three
5 methodologies, not two, not just LIFO and not just FIFO, but
6 what he described as the specific identification of deposits
7 and expenditures. And he described that as impossible in this
8 case. And that gets to the heart --

9 THE COURT: He did.

10 MR. KLINGEMAN: -- of Mr. Gross' guilt. The
11 government alleged in its opening statement that Mr. Gross took
12 these bribes and used the proceeds for personal reasons, and
13 they went through a litany of allegations.

14 This witness, the government's summary witness --

15 THE COURT: Can you pull up the microphone?

16 MR. KLINGEMAN: This witness, the government's summary
17 witness, and by all accounts an expert, has said that is
18 impossible to establish that connection between the receipts of
19 the alleged bribes and the expenditures that the government has
20 identified as part of Mr. Gross' corrupt use of those receipts.

21 So what the government has done, recognizing that it's
22 impossible to do that, they've hired an expert, they've given
23 him direction as to what alternative accounting method to use
24 so as to be able to make that connection, artificially, to reach
25 the conclusion they want to reach, which is that the money that

H37KLEB3

Rollins - direct

1 came in from the Collectables Club, for example, or Kapcharge,
2 for example, was ultimately spent by Mr. Gross personally. The
3 way they do that is by FIFO because they can't do it by the
4 better method, which is the specific identification of deposits
5 and expenditures that the witness described.

6 But my point is: One, they can't substitute an expert
7 opinion for that lack of connection, that impossibility. But,
8 nevertheless, they're entitled, as the government is and as the
9 defendant would be, entitled to argue in opposition that
10 Mr. Gross was motivated to accept these bribes, so that he
11 would have access to more money that he could use for personal
12 expenditures. That happens in every kind of financial fraud
13 case. It's what the government forecasted it was going to do.
14 We objected pretrial. Your Honor overruled our objection, and
15 we're arguing the consequences of that.

16 But depriving the government of the right to
17 substitute an accounting theory to breach that gap is
18 impermissible.

19 THE COURT: Are you getting to the simple solution
20 that you suggested you had?

21 MR. KLINGEMAN: Yes.

22 THE COURT: Let's get to it.

23 MR. KLINGEMAN: In the Government Exhibit 900, there
24 are a series of slides that don't do anything more than recite,
25 as slide number 6 did, the receipts, and the slides -- the rest

H37KLEB3

Rollins - direct

1 of the documents do the various expenditures that the
2 government has identified as Mr. Gross undertaking.

3 Your Honor has already said that that evidence comes
4 in. So we're not arguing that those slides shouldn't come in.
5 That gives the opportunity -- that gives the government the
6 opportunity to stand up in summation, as we anticipated they
7 would, and say he took these bribes, and he spent this money on
8 himself. That's the way every case works. Every case doesn't
9 work with an expert coming in and talking about FIFO or LIFO.

10 So our objection was narrowly tailored, and the Court
11 can accommodate it and accommodate the government's need to
12 offer this testimony, offer this exhibit, and then make their
13 arguments.

14 THE COURT: I can't say I understand what you're
15 proposing.

16 MR. NOBLE: Judge, he's proposing that --

17 THE COURT: I want to hear from him. I want to
18 understand what he's proposing.

19 MR. NOBLE: Sorry.

20 THE COURT: Go ahead, Mr. Klingeman.

21 MR. KLINGEMAN: As a summary witness, Mr. Rollins can
22 say that he examines bank records, credit card receipts, other
23 financial documents, other evidence, other exhibits, and based
24 on that, he has created various charts that are contained in
25 the slides, to which we have no objection, that list the

H37KLEB3

Rollins - direct

1 sources of funds --

2 THE COURT: What slides?

3 MR. KLINGEMAN: Well, the government's already
4 introduced one of them, to which we do not object, and that
5 would be Government Exhibit 900-4.

6 And there are additional slides that list the various
7 expenditures and uses of the funds, and we have no problem with
8 that either. What we have a problem with is using an expert
9 accounting analysis to specifically link the sources of funds
10 to the expenditures, when he has admitted, or testified, that
11 to do that without the benefit of that accounting methodology
12 would be, quote, impossible, unquote.

13 MR. NOBLE: Judge, I believe that everything that
14 Mr. Klingeman just argued is fair cross-examination for this
15 witness. And defense counsel has been on notice, they could
16 have prepared their own summary exhibits using a different
17 methodology, hiring another forensic accountant, to say, I
18 applied LIFO, I applied the matching analysis, and these are
19 the results that I get. This is factual testimony based on one
20 assumption about how funds are expended from an account.

21 And, your Honor, this really is going to prejudice the
22 government's case because what Mr. Klingeman is proposing is
23 that we strip out how we show the jury Mr. Gross used the
24 funds, and that it's pure facts, based on this assumption, that
25 the witness has testified the government told him to apply.

H37KLEB3

Rollins - direct

1 And I can reiterate that, or, alternatively, we can qualify him
2 as an expert. We don't even need him to testify any further
3 about why he chose this methodology.

4 But, your Honor, to be sandbagged the night before
5 we're closing, with our last witness, that this is an expert
6 that should have been noticed weeks' ago, they could have
7 brought this up weeks ago, and we could have briefed it, we
8 could have argued it, we could have sought to qualify him as an
9 expert, they would have had more time to prepare to challenge
10 that qualification. But to do this at the last minute is
11 extremely unfair, particularly given this is not expert
12 testimony. This has been admitted in other cases. It's a
13 tracing analysis based on one assumption of how you go about
14 doing the tracing.

15 I think everything that Mr. Klingeman was arguing and
16 pointing out about potential flaws in the analysis is all fair
17 game for cross. It goes to the weight of the testimony that
18 should be given, to the summary. It does not go to
19 admissibility.

20 Furthermore, your Honor, we requested a limiting
21 instruction to say that the jury is supposed to analyze the
22 underlying evidence, the evidence that's actually in evidence
23 for them to consider, not these charts, not these slides. And
24 they're only to consider the witness' testimony and these
25 slides to the extent that they find that it's actually

H37KLEB3

Rollins - direct

1 supported by the evidence in the record. They can apply that
2 assumption, they can reject that assumption, based on the
3 arguments made to them by counsel.

4 This is not expert testimony. He opined that there
5 were various options. I asked him about the various options,
6 essentially, to draw the sting because I know Mr. Klingeman is
7 going to ask him about what the other options were. And I
8 think he clearly testified that at the end of the day, the
9 government told him, apply this methodology, see what results
10 you get, come to court, testify that these are the results
11 based on that assumption. And I can reiterate that before we
12 restart the analysis.

13 THE COURT: All right. Here's what we're going to do:
14 I will give you an opportunity to probe further, and I will
15 make an assessment on that, but I'm essentially of the view
16 that the defense was on notice of this issue, failed to timely
17 raise the matter. And I will give the defense a full
18 opportunity, even if it means delay of some kind, to counter
19 with an expert, or a summary witness, or a witness to dispute
20 the reliability of methodology or to make the methodology
21 points, Mr. Klingeman, that you made to me in your contention.

22 But I sit here, the day that I'm hearing of this
23 issue, after this witness was noticed in advance as a summary
24 witness, and the specific proposed summary slides, including
25 the reliance on this one assumption was made, without any

H37KLEB3

Rollins - direct

1 contention proffered that doing so suggests any unreliability.
2 So, to the extent that this is close to the line as to the use
3 of the methodology, I'll see what the witness says upon further
4 examination, I'll allow full opportunity for cross-examination,
5 and I will allow the defense, even if it means some delay in
6 the trial, to come forward with a counter summary witness of
7 comparable background and the like.

8 MR. NOBLE: Judge, just to be clear, when the Court
9 says you'll make a ruling based upon further examination, what
10 I intend to do is ask him, who ultimately decided to apply the
11 FIFO methodology in this case? And I believe his testimony
12 will be the government told me to do that.

13 THE COURT: And if it's not?

14 MR. NOBLE: That's my understanding based on
15 conversations --

16 THE COURT: I'm just asking you to run the
17 hypothetical if it's not his answer.

18 MR. NOBLE: That it wasn't ultimately the government's
19 decision?

20 THE COURT: I don't know the answer, but if it's, I
21 told the government this was the best method, so they told me
22 to apply it.

23 MR. NOBLE: No, I think his testimony is going to be,
24 as he said before, we discussed the various options, the
25 government told me apply this FIFO methodology to your

H37KLEB3

Rollins - direct

1 analysis. Let's use this one, let's use this assumption.

2 THE COURT: And if it's not?

3 MR. NOBLE: We would seek to qualify him as an expert,
4 if that's what's required.

5 THE COURT: And how do you deal with the failure to
6 notice him as an expert?

7 MR. NOBLE: I mean, there's no prejudice to any lack
8 of notice. They have his resume, they've had these slides for
9 a couple of weeks, we told them long before we were going to
10 call a summary witness to summarize the bank and financial
11 records. So they've been on notice that this was the
12 testimony, and if they had thought that this was actually
13 expert testimony, they could have raised it two weeks ago.

14 So I don't see what prejudice there would be if he
15 is -- can adequately be qualified under 702 as an expert
16 witness, which I think he can be based on the foundation that's
17 already been laid about his education, his work experience, his
18 certifications. And I can probe further into other matters
19 that he's testified about --

20 THE COURT: Well --

21 MR. NOBLE: -- but I don't think we're going to have
22 to go there.

23 THE COURT: All right.

24 Mr. Klingeman?

25 MR. KLINGEMAN: I have made my objections. I --

H37KLEB3

Rollins - direct

1 THE COURT: And the government will live with its
2 decisions.

3 MR. KLINGEMAN: And I respectfully disagree with the
4 discussion of notice.

5 But having said that, if the Court is inclined to
6 allow publication of the exhibit, I just want to note my
7 objection now, as opposed to popping up like a Jack In The Box.

8 THE COURT: That's fair.

9 MR. KLINGEMAN: So I'm not going to object based on
10 what the Court --

11 THE COURT: I understand it to be a standing objection
12 for the reasons that we've discussed.

13 MR. KLINGEMAN: Now, I may, obviously, your Honor, in
14 the course of the direct, have other objections, and if I do,
15 understand I'm not objecting on the original grounds, but I may
16 have some additional or different grounds. I'll try to keep my
17 objections at a minimum.

18 THE COURT: Okay.

19 Ultimately, it's a conclusion based on effectively a
20 late objection based on expert testimony and the lack of
21 prejudice based on what I understand to be proceeding in light
22 of the slides and the government's proffer as to the
23 anticipated testimony.

24 Get the witness and bring in the jury.

25 MR. NOBLE: Judge, after the additional questions that

H37KLEB3

Rollins - direct

1 I will ask, the foundational questions, I do intend to offer
2 the rest of the exhibit, just so that we can go through it.

3 THE COURT: After the financial question?

4 MR. NOBLE: Yes.

5 THE COURT: Assuming it's as anticipated?

6 MR. NOBLE: Yes.

7 THE COURT: You can offer it. I understand
8 Mr. Klingeman to object to that. And if it's as you've
9 anticipated, I'm overruling the objection for the reasons I've
10 indicated.

11 MR. NOBLE: Okay.

12 (Continued on next page)

H37KLEB3

Rollins - direct

1 (Jury present)

2 THE COURT: Members of the jury, my thanks again for
3 your patience.

4 Mr. Noble, you may proceed.

5 MR. NOBLE: Thank you, Judge.

6 BY MR. NOBLE:

7 Q. Mr. Rollins, before we broke, you were testifying about the
8 FIFO methodology. Do you remember that?

9 A. Yes, I do.

10 Q. And I believe you testified that you had conversations with
11 counsel for the government about FIFO and other options that
12 could have been used for your analysis?

13 A. That's correct.

14 Q. Ultimately, whose decision was it to apply the FIFO
15 methodology in the analysis that you performed?

16 A. Ultimately, it was counsel who instructed me to use FIFO.

17 Q. Counsel for the government instructed you?

18 A. The government, yes.

19 THE COURT: I'm sorry, instructed you to?

20 THE WITNESS: To use the FIFO methodology.

21 MR. NOBLE: Your Honor, at this time we'd offer the
22 remaining exhibits in Government Exhibit 900.

23 THE COURT: All right. And as discussed, they are
24 admitted.

25 (Government's Exhibits 900 series received in

H37KLEB3

Rollins - direct

1 evidence)

2 MR. NOBLE: Thank you, your Honor.

3 BY MR. NOBLE:

4 Q. I'd now like to walk through, for the jury, an example of
5 how FIFO works and as you applied it in this case.

6 A. Okay.

7 MR. NOBLE: Can we bring up -- actually, I think I
8 have the clicker, so I'll just control.

9 Q. Can you explain, using this example, of how FIFO works with
10 respect to a bank statement?

11 A. Right. So here what I provided on this slide 8 is an
12 example on bank statement just using some example information.
13 And what I've done is I've boxed out the sources and the uses
14 of funds. So the first set of boxes, two lines, one is a
15 beginning balance of \$500, and one is a deposit of \$1,000,
16 which you see in the amount column. Those are sources of money
17 that are in the account.

18 And then the last four rows of the statement contain
19 the uses, which includes a debit card -- three debit card
20 payments and a check payment.

21 So, in applying the first-in, first-out, or FIFO,
22 methodology in tracing the uses to the sources, the beginning
23 balance, which was in the account prior to the deposit, is used
24 to satisfy the first two payments made out of the account
25 following the deposit. So, again, the first or the oldest

H37KLEB3

Rollins - direct

1 money in the account is used to satisfy the first payments out
2 of the account.

3 Q. Slide 10?

4 A. And then slide 10 shows that once the oldest money is used
5 up, then you turn to the deposit of \$1,000, which is then used
6 to satisfy the next thousand dollars in payments out of the
7 account, which correspond to the last two rows, for 850 and
8 150.

9 Q. And, to be clear, these are just made up bank statements
10 that you're using as a demonstrative --

11 A. That's correct.

12 Q. -- is that correct?

13 A. That's correct.

14 Q. Let's go to slide 11. You testified earlier that there's a
15 difference in applying FIFO to bank statements versus credit
16 card statements, correct?

17 A. That's correct.

18 Q. Can you explain that to the jury, using this example?

19 A. Right. And, again, as I explained earlier, that's
20 typically due to the way it is presented on the bank record.
21 So, for a credit card statement, the charges occur, generally,
22 before card payments are made. So, generally, people will pay
23 off balances in their account after making purchases.

24 So, in this example, you see that then the uses of
25 funds, which are the purchases, which are in the first box, so

H37KLEB3

Rollins - direct

1 there are four rows that are encompassed in that first box, and
2 then the sources of funds, which are the card payments that
3 occur after the uses of funds, are denoted in the second box.

4 Q. Slide 12?

5 A. So, in applying the first-in, first-out method, you apply
6 the first payment, which is the oldest money deposited into or
7 paid into the credit card statement. The first card payment of
8 \$500, which you see in the second box, is used to satisfy the
9 first \$500 in purchases, which are those -- the first two rows
10 in the first box, for 100 and 400.

11 Q. Slide 13?

12 A. And then in carrying that methodology forward, the second
13 payment of \$4,000 is used to satisfy the next \$4,000 in
14 purchases.

15 Q. So let's talk about the specific transactions that the
16 government asked you to analyze.

17 A. Okay.

18 Q. What was the first transaction you looked at?

19 A. The first transaction was a \$15,000 transfer into Hope
20 Cathedral's operating account at PNC Bank, and it was a Fedwire
21 transfer dated May 9th, 2014.

22 Q. You see that little number 1 --

23 A. Yes.

24 Q. -- on the exhibit?

25 What does that indicate?

H37KLEB3

Rollins - direct

1 A. What I've done throughout the report, to make it easier to
2 follow and to read the slides, is provide, in a circle, a
3 number corresponding to the number of the transfer. So
4 transfer one has a small circle with a one in it, transfer two
5 has a small circle with a two in it.

6 Q. Where did the first transfer come from?

7 A. So, the first transfer came from a bank account associated
8 with Currency Enthusiasts, which you see an extract on slide
9 16.

10 Q. And what was written in the memo line for that transfer?

11 A. So, on the sender's bank statement, in the memo line,
12 there's a bunch of information, one word of which I highlighted
13 on the slide, and it's the word "donation."

14 Q. Slide 17, what are we looking at here?

15 A. Slide 17, we're looking at --

16 MR. KLINGEMAN: Your Honor, could I just have one
17 moment, please?

18 THE COURT: Yes.

19 (Pause)

20 MR. KLINGEMAN: Thank you, your Honor.

21 THE COURT: Thank you, Mr. Klingeman.

22 Go ahead, Mr. Noble.

23 MR. NOBLE: Thank you, Judge.

24 BY MR. NOBLE:

25 Q. Mr. Rollins, slide 17 what is the document that's depicted

H37KLEB3

Rollins - direct

1 here?

2 A. So, slide 17 shows an excerpt from Hope Cathedral's PNC
3 account, account number 4632, and it's showing -- what I've
4 highlighted is the receipt of the \$15,000 Fedwire on May 9th.

5 Q. Slide number 18, what are we looking at?

6 A. Slide number 18 is an excerpt from PNC Bank Fedwire
7 details. So these are the details underlying the Fedwire
8 transaction that were provided by the bank, and it shows the
9 payment amount, the \$15,000, as well as the recipient, Hope
10 Cathedral, and the sender, Currency Enthusiasts.

11 Q. And what was the bank from which this wire transfer was
12 sent?

13 A. Right. And there's a box that shows that the bank that it
14 was sent from was Bank of America.

15 Q. And where was that located?

16 A. The document indicates New York, New York.

17 Q. Let's go to the second transfer. What was the second
18 transfer you analyzed on slide 19?

19 A. So the second transfer was a \$15,000 Fedwire transfer,
20 again to Hope Cathedral's operating account at PNC Bank, and it
21 was dated May 21st, 2014.

22 Q. What's on slide 20?

23 A. Slide 20 is the sender's bank statement, and, again, in
24 this case, it was Currency Enthusiasts' account at Bank of
25 America.

H37KLEB3

Rollins - direct

1 Q. And what is in the memo line?

2 A. The memo line, again, contains information with respect to
3 the transaction, but also the word "donation," which I've
4 highlighted.

5 Q. What's on slide 21?

6 A. Slide 21 is an excerpt from Hope Cathedral's bank statement
7 for the 4632 account, and I've highlighted the receipt of the
8 \$15,000 Fedwire on May 21st, 2014.

9 Q. And slide 22, what's depicted?

10 A. And slide 22 are the Fedwire details, again from PNC Bank,
11 underlying this transaction, and I've highlighted the
12 recipient, indicated as Hope Cathedral, the sender, indicated
13 as Currency Enthusiasts, the amount, \$15,000, as well as the
14 bank associated with the sender.

15 Q. Where was that bank located?

16 A. That was, again, Bank of America, indicated as located in
17 New York, New York.

18 Q. Let's talk about transfer number three. What was that
19 transfer that you analyzed?

20 A. Transfer number three was in the amount of \$120,000, and it
21 was an ACH transaction to Hope Cathedral's operating account at
22 PNC Bank, and it was dated June 23rd, 2014.

23 Q. What's depicted on slide number 24?

24 A. Slide number 24 shows the recipient's bank statement, so
25 this is Hope Cathedral's 4632 account, and it shows the receipt

H37KLEB3

Rollins - direct

1 of the ACH incoming transfer, and it indicates -- it's a
2 corporate ACH and provides the word Kapcharge in the
3 description.

4 Q. What's depicted on slide 25?

5 A. And slide 25 is PNC ACH transaction detail, and what I've
6 highlighted here is the amount, which is in the box to the
7 right, that is the \$120,000, and then under the co-entry
8 descriptor, indicating the Kapcharge.

9 Q. What was the fourth transfer you analyzed?

10 A. And the fourth transfer was a \$3,500 ACH transfer to Hope
11 Cathedral's operating account at PNC Bank, and it was dated in
12 August 22nd of 2014.

13 Q. In the amount of 3500?

14 A. In the amount of 3500.

15 Q. What's depicted on slide 27?

16 A. And 27 shows Hope Cathedral's bank account showing the
17 incoming ACH credit of \$3,500, and it's dated August 22nd, and
18 it indicates in the description the words "Collectables CLU,"
19 and then "CONSRENT 070814."

20 Q. What's depicted on slide 28?

21 A. Slide 28 is an ACH item detail report for this transaction
22 for the ACH in which this transaction was part of, and it
23 indicates the sender's name as Collectables CLU; the date,
24 August 22nd, 2014; the amount of \$3,500; and then under the
25 receive ID and receiver name, I've highlighted to the left that

H37KLEB3

Rollins - direct

1 it says, "CONSRENT 070814," and then Trevon Gross.

2 MR. NOBLE: And just for the record, CONSRENT is
3 C-o-n-s-r-e-n-t.

4 Q. Where did you find this document?

5 A. This document was provided me by counsel for the
6 government, but it is indicated as being from Alloya Federal
7 Credit Union.

8 Q. What is the name of the particular document that we're
9 looking at here?

10 A. It's called ACH item detail.

11 Q. What's depicted on slide 29?

12 A. Slide 29 shows Hope Cathedral's operating account, 4632,
13 and it shows that on the same day that HOPE received the
14 \$3,500, there was an outflow from the account back to
15 Collectables CLU in the amount of 7550, which was half of the
16 amount that had come in.

17 Q. So 3500 comes in, and the same day, 1750, half of it, goes
18 back out?

19 A. It goes back out.

20 Q. So what are you summarizing on slide number 30?

21 A. Slide number 30 is summarizing the first four transfers,
22 all of which were deposited into Hope Cathedral's account at
23 PNC Bank, the 4632 account. So, on the left-hand side, I've
24 indicated the four transactions, the dates and the amounts, as
25 well as indicating that on the last transaction, as we just

H37KLEB3

Rollins - direct

1 spoke about, there was -- half of the amount was sent back.

2 And then on the right-hand side, what I've indicated is a
3 summary, the high-level summary of the uses of funds.

4 Q. Can you just summarize for the jury the various categories?

5 A. Sure. So the first category is called direct payments, and
6 it's for \$108,000 -- \$108,473.54. And that included check
7 payments, debit card payments, and other transfers, direct
8 transfers out of the operating account.

9 The next category included credit card accounts. So,
10 again, as I had indicated earlier, some of the money that was
11 transferred out of the Hope Cathedral operating account went to
12 pay off balances in credit card accounts, and I've identified
13 \$20,922.06 that went to the credit card accounts.

14 And then, finally, the last category is transfers to
15 other related bank accounts, which I had mentioned earlier as
16 the payroll, the bookstore, and the ministry's account, and
17 that totaled \$20,604,40.

18 Q. After you identified this level of transfers, were you able
19 to perform any other tracing?

20 A. Yes. So, for all of the categories, I was able to trace
21 further in various instances. So, for the credit card
22 accounts, I went to the credit card statements themselves to
23 identify the purchases that those balances -- payments were --
24 the payments to the credit cards were paying off.

25 For the related bank accounts, I went to the

H37KLEB3

Rollins - direct

1 statements for those bank accounts and identified the uses of
2 funds following the transfers in of the amounts that were
3 transferred to those accounts. And then for the direct
4 payments, that was a combination, so in some cases the direct
5 payments were, for example, debit card purchases, that was the
6 end of my tracing analysis, but in other cases, there were a
7 series of transactions that involved, for example, payments to
8 PayPal, and for those, I went further into the PayPal records
9 that I was provided to identify the ultimate use of the funds
10 in terms of what was purchased.

11 (Continued on next page)

12
13
14
15
16
17
18
19
20
21
22
23
24
25

H370LEB4

Rollins - Direct

1 Q. And the next series of slides that we're about to look at,
2 do those summarize the uses of these various payments as you
3 traced them based on the FIFO methodology?

4 A. Yes. I've summarized the uses, as well as provided some
5 examples to walk through some of the purchases.

6 Q. So let's talk first about the -- just walk through the
7 credit card transfers. Specifically, how much was transferred
8 from the church operating account to make payments on the
9 various credit cards you examined?

10 A. So if you go back to the previous slide, I've totaled it as
11 \$20,922.06, and then on this slide, I've broken down how much
12 went to each of the three credit card accounts.

13 So the first account, the American Express account,
14 account number 1009, \$16,422.81 was traceable to that account.

15 For the second account, which is the Discover, 6282
16 account, \$3,256.84 was traceable to that account.

17 And then the last account, which was a Chase account,
18 7624, I identified \$1,242.41.

19 Q. For the record, we're looking at slide 31; is that correct?

20 A. Sorry, yes, slide 31.

21 Q. Let's go to slide 32. What information did you provide on
22 slide 32?

23 A. So in slide 32, what I've provided is information that
24 indicates who held the American Express account.

25 Q. Who was the account holder?

H370LEB4

Rollins - Direct

1 A. The account holder as indicated on the record was Trevon
2 Gross.

3 Q. Was any other entity listed on that account record after
4 the name Trevon Gross?

5 A. Yes. Under his name there is Hope Cathedral listed.

6 Q. What is the address listed on the account records?

7 A. And then on the account records the address is listed as 1
8 Sienna Drive, Jackson, New Jersey, 08527.

9 Q. Slide 33, which credit card records is this for?

10 A. And this is for the Discover card, 6282.

11 Q. Who is the account holder?

12 A. The account holder is Trevon Gross.

13 Q. Slide 34, what credit card this?

14 A. This is the Chase credit card, 7624.

15 Q. Who is the account whored?

16 A. Trevon Gross.

17 Q. What is summarized on slide 35?

18 A. So in the previous slide 31, I provided the overall amounts
19 that I traced to the three credit cards, and in this slide I've
20 provided the total number of transfers that I observed within
21 the bank records as being transferred to those accounts during
22 this time period, of which for the American Express there are
23 three that I identified as being traceable use the FIFO
24 methodology, and there were two transfers that were not
25 traceable. Then for the Discover and Chase cards, I've

H370LEB4

Rollins - Direct

1 indicated that there was one transfer to each of the two
2 accounts during this time period.

3 Q. To what transaction were these credit card payments on the
4 American Express traceable?

5 A. For the traceable, the first three transactions, they were
6 all traceable back to the third, the deposit of \$120,000.

7 Q. And the Discover card and Chase credit card?

8 A. And those both were also traceable back to the third
9 transfer.

10 Q. Let's talk a little bit about the transfers to other bank
11 accounts from the PNC operating account. Can you explain what
12 slide 36 summarizes?

13 A. So as I had indicated earlier, some of the traceable funds,
14 or some of the uses of funds went through transfers or payments
15 to other related accounts held by Hope Cathedral, three
16 accounts in specific. One was the bookstore account, the 4771
17 account at PNC Bank. The second one was a payroll account, the
18 7367 account, also at PNC bank. And then lastly was the Hope
19 Cathedral Ministries account, the 4755 account at PNC Bank.

20 What I've indicated on this slide is the amount of
21 traceable funds that I identified as being transferred from the
22 Hope Cathedral operating account at PNC Bank to those accounts.

23 And as you can see in the middle of the chart, I
24 identified traceable funds that were transferred to the
25 bookstore account, and then identified further traces of funds

H37OLEB4

Rollins - Direct

1 that were transferred from the bookstore account to both the
2 payroll and the ministries account.

3 Q. Let's talk a little bit about what you saw with respect to
4 payroll. What does slide 37 summarize?

5 A. So with respect to the traceable funds that I traced into
6 the payroll account, I then proceeded to look at the payroll
7 account records to identify who received payroll checks
8 following those transfers. And this slide depicts a summary of
9 all of the individuals that I identified as being paid from
10 those funds.

11 Q. Approximately how much did Trevon Gross receive in
12 traceable funds?

13 A. In traceable funds, and again, this was in the period, as
14 you can see at the top of the slide, May through July, 2014.
15 \$8,349.62.

16 Q. What is summarized on slide 38?

17 A. Slide 38 is an aggregate summary of the Hope Cathedral
18 sources and uses analysis that I performed.

19 Q. For which transactions?

20 A. This is for transfers 1 through 4.

21 Q. And then what's depicted in the right column?

22 A. So in the right column, what I've done is I provided a
23 summary of the uses of funds in which I've categorized the
24 transactions according to transaction type.

25 Q. How much was used for cash withdrawals?

H370LEB4

Rollins - Direct

1 A. So I identified \$23,470.45 in cash withdrawals, which
2 included a combination of both ATM and teller withdrawals.

3 Q. How much was used for meals, entertainment, and shopping?

4 A. \$21,448.35.

5 Q. How much was used for travel?

6 A. Travel, \$12,976.52.

7 Q. How much was used for payroll to Trevon Gross and family?

8 A. \$10,871.54.

9 Q. How much was used for auto loan payments?

10 A. Auto loan payments, \$10,300.

11 Q. How much was used for an ACH payment to Trevon Gross at
12 another bank?

13 A. \$3,954.46.

14 Q. How much was used for health, spa, and skincare?

15 A. Health, spa and skincare \$2,535.24.

16 Q. How much was used for gas, convenience stores, and auto
17 related?

18 A. \$2,267.58.

19 Q. How much was used for college admissions?

20 A. \$308.75.

21 Q. What is depicted in the next few slides that we're about to
22 look at?

23 A. In the next few slides, I've provided examples of activity
24 that is included in the categories we just looked at.

25 Q. So let's start with the example on slide 39. Just to be

H37OLEB4

Rollins - Direct

1 clear, are these all the sample transactions that you could
2 have drawn from or are these just some of them?

3 A. These are just some of them.

4 Q. Slide 39, what's depicted here?

5 A. So on slide 39, I'm showing a transaction for \$178, and it
6 was related to a purchase at Rosa Mexicano, which is a
7 restaurant, and the address given on the bank statement was
8 West 52nd Street.

9 Q. Sorry. What was the address?

10 A. West 52nd Street in New York.

11 Q. I believe it's 62nd?

12 A. 62nd Street.

13 Q. Is that what you said?

14 A. Yes.

15 Q. I'm sorry, I thought you said 50.

16 A. No, West 62nd.

17 Q. Okay, thank you. And to what source of funds was this
18 transaction traceable?

19 A. This was traceable back to the third transfer, the \$120,000
20 transfer.

21 Q. Sorry. I'm not sure if you said it. What was the date of
22 this transaction?

23 A. June 6th, 2014.

24 Q. What's the transaction depicted on slide 40?

25 A. Slide 40, it's a purchase at Havana Central, which the

H37OLEB4

Rollins - Direct

1 address is 151 West 46th Street in New York, New York.

2 Q. What was the date?

3 A. June 8th, 2014.

4 Q. To which transaction was this traceable?

5 A. And again, this was traceable back to the \$120,000,
6 transfer 3.

7 Q. What's summarized on slide 41?

8 A. Slide 41 summarizes sample activity from the PayPal. So as
9 I had mentioned previously, some of the funds that I traced out
10 of the operating account went to pay payments for PayPal
11 purchases.

12 Q. What was the source of funds for these transactions
13 depicted on slide 41 that you traced as going to PayPal?

14 A. And these were payments that I traced as going to PayPal
15 that I was able to further identify who the third party was for
16 the PayPal expenses, and for those I've identified the first
17 two as being traceable back to the second transfer and, then
18 the next five transactions listed here as traceable back to the
19 third transfer, and then the last one as back to the fourth
20 transfer.

21 Q. There is a green box to the left of the first dollar amount
22 listed.

23 A. Yes.

24 Q. What does that say?

25 A. It says "example". And what I've done is on the subsequent

H37OLEB4

Rollins - Direct

1 slide I've provided more information about that as an example.

2 Q. So let's go to that example. What's depicted on slide 42?

3 A. So slide 42 is additional information with respect to that
4 purchase, and it provides information that this was a purchase
5 made on e-Bay. The seller was identified as Edit Building,
6 LLC, and it was for a purchase of an Apple Mac Pro, and the
7 shipping address was provided as 1 Sienna Drive, New Jersey.

8 Q. What's depicted on slide 43?

9 A. Slide 43 depicts a sample of check payments that were made
10 out of the account and that I was able to identify through the
11 documents who the third party was that the checks were made out
12 to.

13 Q. What's depicted on slide 44?

14 A. Slide 44 depicts one payment that was made out to a company
15 called Thrift Investment, and it was related to an auto loan
16 payment.

17 Q. How much was the payment for?

18 A. It was for \$10,300.

19 Q. Who was listed as the borrower on the loan documents?

20 A. On the loan documents, Trevon Gross was listed.

21 Q. And what was the loan for?

22 A. It was a \$19,000 loan for a Ford Excursion, year 2005.

23 Q. What was the date of the \$10,300 payment?

24 A. It was June 24th, 2014.

25 Q. And to which transaction was this traceable?

H37OLEB4

Rollins - Direct

1 A. The third.

2 Q. What's depicted on slide 45?

3 A. Slide 45 shows some examples of entertainment-related
4 expenses; three related to what appear to be movies, and then
5 one for Broadway show related.

6 Q. And to which transactions were these?

7 A. And all of these were traceable back to the third transfer.

8 Q. Slide 46. What is the sample activity depicted here?

9 A. These depict a series of purchases made at a company called
10 Juice Basin, and this fell under the category health and
11 wellness.

12 Q. To which transaction were these payments traceable?

13 A. These were traceable back to the third transfer.

14 Q. How much was traceable to the third transfer in terms of
15 juice?

16 A. So shown on this slide, it's \$1,154.41 in aggregate.

17 Q. Slide 47, what's depicted here?

18 A. This depicts another purchase that was traceable back to
19 the third transfer, and it's for a 90-minute Shiatsu massage at
20 Tao Massage in Asbury Park, New Jersey.

21 Q. What date?

22 A. June 27, 2014.

23 Q. Who was the customer for the massage?

24 A. Listed on the receipt, it's Trevon Gross.

25 Q. What's depicted on slide 48?

H37OLEB4

Rollins - Direct

1 A. Slide 48 shows sample activity involving purchases from
2 Apple, and this includes both a physical Apple store, as well
3 as online purchases.

4 Q. And how much in total were you able to trace to purchases
5 at Apple?

6 A. I was able to trace \$4,213.96.

7 Q. And from what transactions were those funds traceable?

8 A. Again, these were traceable to the third transfer.

9 Q. What's depicted on slide 49?

10 A. And slide 49, I provided excerpts from the invoice for one
11 of the purchases from Apple, and it shows some of the products
12 that were purchased.

13 Q. And what were the products purchased on what's been labeled
14 invoice A?

15 A. So the first \$99 purchase is indicated as Apple Care for
16 iPad, the second one for \$69 is indicated as a smart case black
17 for an iPad Mini, and the last entry for \$829 indicates a
18 128-gigabyte gray iPad Mini wi-fi.

19 Q. What's depicted on slide 50?

20 A. Slide 50 shows another invoice for some of the other
21 purchases that were made at the Apple store.

22 Q. Let's keep going.

23 A. Okay.

24 Q. What's depicted on slide 51?

25 A. And slide 51 shows college admission related payments that

H37OLEB4

Rollins - Direct

1 I was able to trace back.

2 Q. How much did you trace back to college admissions?

3 A. In total, \$230.

4 Q. And to which transaction were those traceable?

5 A. These were the third transfer.

6 Q. What's summarized on slide 52?

7 A. Slide 52 summarizes the cash withdrawals that I identified
8 as traceable back to the transfers.

9 Q. You testified earlier that there were some ATM withdrawals
10 and teller withdrawals; is that correct?

11 A. That's correct.

12 Q. How was that indicated on this slide?

13 A. So on this slide in the bulleted list you see "ATM" or
14 "withdrawal" listed. So the teller withdrawals are indicated
15 as a "withdrawal", and then ATM as "ATM".

16 And I've also, for all of the ATM withdrawals, I've
17 indicated with a key using the light blue boxes the address
18 indicated for the ATM from which those withdrawals were made.

19 Q. For the ATM withdrawals, were you able to determine from
20 the records you had who made the ATM withdrawals?

21 A. No, I was not. There was not information.

22 Q. How about for the teller withdrawals?

23 A. For the teller withdrawals, I was.

24 Q. So what's depicted on slide 53?

25 A. So this is one of the teller withdrawals, and it was for

H370LEB4

Rollins - Direct

1 \$1,355, and this slide depicts the withdrawal ticket from PNC
2 Bank for that withdrawal.

3 Q. And who made the withdrawal?

4 A. It was made by Trevon Gross, as indicated in the check that
5 it was made out to Trevon Gross -- in the ticket it was made
6 out to Trevon Gross.

7 Q. And what was the date of the withdrawal?

8 A. And the date was June 25th, 2014.

9 Q. What's depicted on slide 54?

10 A. And slide 54 depicts another purchase that was made for a
11 company called Seasonal World.

12 Q. Did you ever see any invoices relating to Seasonal World?

13 A. I did see some invoices related to Seasonal World.

14 Q. From those invoices, did you observe what type of company
15 Seasonal World is?

16 A. It appeared to be a company that services swimming pools.

17 Q. Let's turn to the next set of transactions that you
18 analyzed. Let's start with transfer number 5. What was that
19 transaction?

20 A. Transfer number 5 was what was called a phone transfer for
21 \$1,500, and it was made to Hope Cathedral's member account at
22 HOPE FCU on October 6, 2014.

23 Q. And this is a different account than the Hope Cathedral
24 operating account that we were just talking about with respect
25 to transactions 1 through 4?

H37OLEB4

Rollins - Direct

1 A. That's correct.

2 Q. What's depicted on slide 57?

3 A. Slide 57 shows an excerpt from the sender's bank statement,
4 and in this case the sender of the \$1,500 was an account also
5 held at HOPE FCU in the name of Collectables Club, and it was
6 account number 6437.

7 Q. And slide 58?

8 A. Slide 58 shows the money being deposited into Hope
9 Cathedral's member account at HOPE FCU on October 6, 2014.

10 Q. What was transfer number 6 that you analyzed?

11 A. The sixth transfer was a \$3,000 member transfer, also to
12 Hope Cathedral's member account at HOPE FCU, and the date was
13 October 7th, 2014.

14 Q. What are we looking at in slide 60?

15 A. Slide 60, what we're looking at is the bank record of the
16 sender, Collectables Club again, a Collectables Club account at
17 HOPE FCU. And what I've shown here is the second line in the
18 excerpt is the transfer out to Hope Cathedral's member account,
19 and just prior to that there was an incoming transfer listed on
20 Collectables Club coming from a company called Kapcharge USA,
21 Inc.

22 Q. What are we looking at in slide 61?

23 A. Slide 61 shows Hope Cathedral's member account statement at
24 HOPE FCU, and it shows the receipt of the \$3,000.

25 Q. And then on October 8th, 2014, it appears that there was

H37OLEB4

Rollins - Direct

1 some kind of transfer; is that right?

2 A. That's correct. So one day later, on October 8th, 2014,
3 there is a phone transfer from Hope Cathedral's savings account
4 to its sub -- the checking subaccount which, if you look at the
5 excerpt from the statement, the savings account is the portion
6 in the middle of the page, and then just above the first
7 excerpt box you can see there's a blue row that says "030:
8 checking and scholarship", and then you see at the bottom I've
9 pulled out another except showing that the phone transfer in
10 fact was made to that subaccount.

11 Q. So the money just went from the savings to the checking.

12 A. Right.

13 Q. What was the seventh transfer you analyzed.

14 A. The seventh transfer was the \$6,000 member transfer, again
15 made to Hope Cathedral's member account at HOPE FCU, and in
16 this case the date was November 24th, 2014.

17 Q. What's depicted on slide 63?

18 A. Slide 63 shows a Fedwire transfer out of an account held by
19 Collectables Club at Citibank, and it was wired to Helping
20 Other People Excel FCU in the amount of \$6,000.

21 Q. What was the date again?

22 A. It was November 24th, 2014.

23 Q. What's depicted on slide 64?

24 A. Slide 64 depicts the recipient side of the incoming Fedwire
25 transfer for \$6,000 on November 24th, and in this case it's

H37OLEB4

Rollins - Direct

1 HOPE FCU's account at United Advantage.

2 Q. Slide 65, what are we looking at here?

3 A. And 65 shows the Fedwire details for this transaction.

4 Q. What do the records show the incoming wire was supposed to
5 be -- where it was supposed to be sent?

6 A. So you can see that I've pulled out some boxes indicating
7 the amount of \$6,000, the sender, Collectables Club, the
8 recipient, Helping Other People Excel FCU, and then there's a
9 box on the right-hand side that says "with further credit to
10 account", and it gives the account number 6437000.

11 Q. What are we looking at on slide 66?

12 A. And then here we're looking at Collectables Club's member
13 account at HOPE FCU, which is the account number 6437, showing
14 an incoming wire on November 24th, 2014 in the amount of
15 \$6,000.

16 Q. So that series of transactions just shows a wire coming
17 from a Citibank account held in the name of -- I believe you
18 said Collectables Club; is that right?

19 A. That's correct.

20 Q. -- to ultimately the Collectables Club account at HOPE
21 Federal Credit Union?

22 A. That's correct.

23 Q. And what happened to the \$6,000 after it went into the
24 Collectables Club account at the credit union?

25 A. So what's depicted on slide 67 is that following the

H37OLEB4

Rollins - Direct

1 deposit of the \$6,000 into Collectables Club member account at
2 HOPE FCU, there is a series of transfers out of the account for
3 \$6,000. First, \$6,000 was sent to a member account held in the
4 name of Trevon Gross, but that was sent back on the same day,
5 and then another transfer of \$6,000 was made to Hope
6 Cathedral's member account at HOPE FCU.

7 Q. And all of those transactions happened the same day?

8 A. And all of them happened on November 24th, 2014.

9 Q. What are we looking at at slide 68?

10 A. Slide 68 is showing Hope Cathedral's member account at HOPE
11 FCU, and it's showing the receipt of the \$6,000 on
12 November 24th, 2014, and it indicates, as you can see,
13 Collectables Club as the sender.

14 Q. So transactions 5, 6, and 7, where did they all end up?

15 A. They all ended up at Hope Cathedral's member account, 5170,
16 held at HOPE FCU.

17 Q. And then what does slide 69 depict in terms of where the
18 funds went?

19 A. And then the uses of those funds fell into three broad
20 categories which I've summarized on slide 69.

21 Direct payments, again that includes checks, debit
22 card purchases and other transfers out of the account, and that
23 totaled \$4,617.73.

24 I also identified loan payments, and that totaled
25 \$1,582.27.

H370LEB4

Rollins - Direct

1 Then I also identified a payment to reduce an
2 overdraft balance in one of the accounts, and that was for
3 \$4,000 -- excuse me -- \$4,300.

4 Q. What are we looking at in slide 70?

5 A. Slide 70 is showing one particular check that was made out
6 from this account at -- Hope Cathedral's account at HOPE FCU,
7 and it was made out to Trevon Gross for \$2,000 on October 6th,
8 2014.

9 Q. What's the check number?

10 A. It's 3700.

11 Q. What's depicted on slide 71?

12 A. Slide 71 is an excerpt from Trevon Gross' account held at
13 PNC Bank, account number 1704, and it shows \$2,000 being
14 deposited on October 6, 2014.

15 Q. You said that this is Trevon Gross' account at PNC Bank?

16 A. Yes. So the records indicated that it was an account with
17 both Trevon Gross and, as you can see on the top left, Deon
18 Gross indicated as authorized account holders.

19 Q. What was the transaction that occurred on October 6th that
20 you've highlighted here?

21 A. So I've highlighted an ATM deposit in the amount of \$2,000
22 on October 6th.

23 Q. And was that the check that we saw on slide 70?

24 A. Yes.

25 Q. What are we looking at at slide 72?

H370LEB4

Rollins - Direct

1 A. Slide 72 shows an excerpt from Hope Cathedral's bank
2 statement at HOPE FCU, and it shows the outgoing funds of
3 \$2 million on October 7th, 2014.

4 Q. What was the balance in the account prior to that check
5 being written?

6 A. The balance in the account prior to the check being written
7 was -- I believe it's \$1,288.19, but I'm --

8 Q. It's pretty small, but I think that's --

9 A. I think that's what it was.

10 Q. Okay. So was there enough money in the account to write
11 that check?

12 A. So what happened is that on October 7th, 2014, two checks
13 were attempted to be processed; check 3700, which is the check
14 I just showed you, and then check 3101. And what happened is
15 that the amounts of those checks were \$2,000, and then \$1,500,
16 and there was an insufficient funds problem for both checks,
17 and they were rejected initially.

18 Q. What's depicted on slide 73?

19 A. So slide 73 shows an excerpt from Hope Cathedral's member
20 account at HOPE FCU depicting what I was just describing where,
21 in particular, I'm highlighting the check 3700 and showing that
22 it attempted to clear on October 7th, 2014, but on the same day
23 it was reversed because the available balance was too low to
24 allow the check to clear.

25 Q. Then what happened on October 8th, 2014?

H37OLEB4

Rollins - Direct

1 A. Then on one day later, on October 8th, it's reported that
2 there is a phone transfer in of \$3,000.

3 Q. And to what transaction was that \$3,000 traceable?

4 A. And that was traceable back to the transfer number 6.

5 Q. And then what happened also on October 8th with respect to
6 check number 3700?

7 A. And then what happened is that then, as you can see at the
8 bottom, and the reason why this is at the bottom is because it
9 was reported on the next page, so on the left-hand side, that's
10 the first page for that month's statement, and then on the
11 right-hand side, that's the second page, and it shows that the
12 check then went through on that day.

13 Q. What's depicted on slide 74?

14 A. Slide 74 shows details from Hope Cathedral's member account
15 at HOPE FCU, and it shows for transfer 7 the \$6,000 coming in
16 on November 24th, 2014, and then it shows four days later, on
17 November 28th, 2014, two phone transfers withdrawing funds from
18 the account.

19 Q. What was the balance in the account before the \$6,000
20 deposit?

21 A. So before the deposit it was \$30.78, which you can see, I
22 believe it's the third row down on the right-hand side of the
23 slide.

24 Q. What's depicted on slide 75?

25 A. Slide 75 shows -- so the first phone transfer that was made

H37OLEB4

Rollins - Direct

1 on November 28th went to a business loan account, subaccount,
2 560, and it shows the incoming phone transfer in the amount of
3 \$1,613.05, and as you can see, that paid down the balance in
4 that loan.

5 Q. To be clear, who did this loan belong to?

6 A. This was listed under Hope Cathedral's account at HOPE FCU.

7 Q. What's depicted on slide 76?

8 A. Slide 76 shows that second phone transfer that I talked
9 about on November 28th, 2014, and it shows it going into the
10 030 checking scholarship subaccount, also at Hope Cathedral's
11 HOPE FCU member account, and it shows the deposit of the
12 \$4,300.

13 Q. What did the deposit of \$4,300 do with respect to the
14 balance in that account?

15 A. And you can see on the right-hand side of the excerpt, the
16 balance in the account was negative prior to that, and it
17 simply reduced -- or made the negative amount smaller.

18 Q. What is summarized on slide 77?

19 A. Slide 77 is a summary, a high-level summary of the sources
20 and uses for transfer 5 through 7, and on the left-hand side
21 I've indicated the three transfers, and on the right-hand side
22 I've again, similar to what I did for transfers 1 through 4,
23 I've categorized the uses and provided a summary of that here.

24 Q. How much was traceable to reducing the overdraft balances
25 in the account?

H37OLEB4

Rollins - Direct

1 A. That was \$4,300.

2 Q. How much was traceable to checks to Trevon Gross?

3 A. That was \$2,000.

4 Q. How much was traceable to cash withdrawal?

5 A. \$503.

6 Q. How much was traceable to meals, entertainment, and
7 shopping?

8 A. \$248.92.

9 Q. Let's talk about the eighth transfer. What did that
10 involve?

11 A. The eighth transfer involved -- and I believe I mentioned
12 this earlier -- it involved the \$50,000 Fedwire transfer HOPE
13 FCU's credit union account at United Advantage on December 2nd,
14 2014, and that transfer was returned one day after the initial
15 transfer.

16 Q. So we'll walk through these slides quickly. What's on
17 slide 80?

18 A. Slide 80 shows a sender's bank statement, in this case the
19 Collectables Club account held at Citibank.

20 Q. Where was the money going to?

21 A. And it shows \$50,000. It indicates it's wired to United
22 Advantage.

23 Q. What's on slide 81?

24 A. And then slide 81 is an excerpt from HOPE FCU's United
25 Advantage account, and it shows the incoming transfer of

H37OLEB4

Rollins - Direct

1 \$50,000.

2 Q. Slide 82.

3 A. And then slide 82 shows the Fedwire details for this
4 transaction, and it shows the \$50,000, it shows the sender --
5 or originator as Collectables Club, and it shows the name of
6 the beneficiary as United Advantage NW FCU.

7 Q. What's depicted on slide 83?

8 A. And then slide 83 shows HOPE FCU's -- it shows an excerpt
9 from HOPE FCU's statement for its United Advantage account, and
10 it shows the incoming -- actually, it shows the return of the
11 \$50,000.

12 Q. And slide 84.

13 A. And then slide 84 shows a Collectables Club account at
14 Citibank receiving the return of funds on December 3rd, 2000 --

15 Q. What's depicted on slide 85?

16 A. And then slide 85 shows the Fedwire confirmation for the
17 return of funds. As I've highlighted in the excerpt on the
18 left side of the slide, it indicates that it was a return wire,
19 and it indicates the wire from December 2nd, 2014.

20 Q. So did you trace any uses of this \$50,000?

21 A. I did not, no.

22 Q. Let's go to the last two transactions that you traced
23 beginning with -- well, why don't we talk about both of them,
24 number 9 and number 10. What were those transfers?

25 A. So both were transfers made to HOPE FCU's business checking

H37OLEB4

Rollins - Direct

1 account, and it was held at Lakeland Bank which was formerly
2 known at Harmony Bank. The first transfer 9 was dated May 5th,
3 2015, and it was for \$50,000, and the second transfer 10 was on
4 October 9th, 2015, and it was for \$30,000.

5 Q. Slide 88, what's depicted here?

6 A. Slide 88 is showing a deposit of \$50,000 into an account
7 held at HOPE FCU in the name of Kapcharge USA, Inc.

8 Q. Slide 89?

9 A. And then this is the same statement but it's -- I'm showing
10 a different part of the statement, showing that following that
11 deposit of \$50,000, on April 28th, 2015, there are two ACH fees
12 charged by the credit union, both in the amount of \$25,000.

13 Q. So the \$50,000 and then the two \$25,000 payments in the
14 Kapcharge account net out to zero, is that fair to say?

15 A. The two \$25,000 ACH fees net out to the \$50,000 ACH, yes.

16 Q. And those all occurred on the same day?

17 A. They all occurred on the same day.

18 Q. So transfer number 9, when did that occur?

19 A. So transfer number 9 occurred on May 5th, 2015, and it was
20 a Fedwire transfer to HOPE FCU's account at Lakeland Bank,
21 formerly Harmony Bank.

22 Q. Approximately how long after the Kapcharge transfers that
23 we just looked at did transaction number 9 occur?

24 A. I believe it was approximately a week.

25 Q. So the date, this is May 5th, 2015?

H37OLEB4

Rollins - Direct

1 A. Yes, May 5th, 2015.

2 Q. What was the date of the Kapcharge transfers?

3 A. That was April 28th, 2015.

4 Q. What's depicted on slide 91?

5 A. Slide 91 shows an excerpt from HOPE FCU's account at
6 Lakeland Bank, formerly Harmony Bank, and it shows a wire in
7 from, and it's indicated as HOPE FCU for \$50,000 on May 5th,
8 2015.

9 Q. And what was the prior balance in the credit union's
10 account at Harmony Bank before this \$50,000?

11 A. And as I've blown up, it's a little blurry, but it says
12 \$3,435.13.

13 Q. What's depicted on slide 92?

14 A. And slide 92 shows wire advice information for the \$50,000
15 Fedwire, and it shows the sender as being HOPE FCU, and it
16 shows the beneficiary, and it shows an ID D11007994.

17 Q. Now, is it fair to say this shows basically the credit
18 union moving money between accounts of the credit union?

19 A. Well, this shows money being sent into HOPE FCU's Lakeland
20 Bank account from HOPE FCU, and the sender number, the
21 031289272 was the routing number for HOPE FCU.

22 Q. Okay. So it's HOPE FCU sending money to its account at
23 Lakeland Bank?

24 A. Yes.

25 Q. What was the tenth transaction you analyzed?

H37OLEB4

Rollins - Direct

1 A. The tenth transaction was a transaction on October 9th,
2 2015, and it was in the amount of \$30,000, a Fedwire transfer
3 to, again, to HOPE FCU's account at Lakeland Bank.

4 Q. What's depicted on slide 94?

5 A. Slide 94 shows two transactions that I identified that
6 occurred shortly before that transfer, and it was two ACHs sent
7 to Kapcharge USA, Inc.'s member account at HOPE FCU in the
8 amount of 25,000 and \$5,000 respectively, and both of those ACH
9 transactions were dated October 9th, 2015.

10 Q. What's depicted on slide 95?

11 A. So slide 95 shows an excerpt from HOPE FCU's account held
12 at Lakeland Bank, formerly Harmony Bank, and it shows the
13 incoming Fedwire of \$30,000 from -- again this is indicating
14 that it's from HOPE FCU, and it's dated October 9th, 2015.

15 Q. And what was the prior balance in the account?

16 A. The prior balance is indicated as \$611.96.

17 Q. Slide 96, what does this show?

18 A. This shows the wire advice information for this Fedwire,
19 and it shows the amount of \$30,000, it shows the sender, again,
20 the number indicated there 031289272, and then HOPE FCU, and
21 after that -- as the routing number for HOPE FCU, and then it
22 provides the beneficiary, and it provides a number D11007994
23 and 7994 is the account number for HOPE FCU's account at
24 Lakeland Bank, and then it provides the address and the name
25 Helping Other People Excel FCU.

H37OLEB4

Rollins - Direct

1 Q. What are you summarizing on slide 97?

2 A. And then slide 97 I'm summarizing for transfers 9 and 10,
3 again, the broad categories of how those funds were then used.

4 Q. How was the \$80,000 used?

5 A. I identified four main categories here. The first is
6 payments to a company called Blues Youth City in the amounts of
7 \$30,743.87, professional services for \$13,187.50, and then
8 other, which included a variety of other transfers and
9 transactions, for \$15,600.38.

10 Then in this case, there was an unused balance in the
11 account that remained at the end of the period for which I had
12 bank records, and that balance was \$20,458.25.

13 Q. What is summarized on slide 98?

14 A. And then slide 98 shows the overall summary of the sources
15 and uses. On the left-hand side it shows the uses for 9 and 10
16 being the wires for the 50 and the \$30,000, and then the uses
17 of the funds on the right-hand side by category.

18 Q. We just walked through those on the previous slide, the
19 summary?

20 A. Yes.

21 Q. So let's switch gears a little bit. In addition to
22 analyzing the ten transactions involving the Hope Cathedral
23 accounts, what, if anything, did the government ask you to do
24 with respect to this case?

25 A. So one of the analyses that the government asked me to do

H37OLEB4

Rollins - Direct

1 was to perform some analysis of activity involving bank
2 accounts held by Collectables Club, Collecting Club, and
3 Currency Enthusiasts.

4 Q. What is depicted on slide 100?

5 A. Slide 100 shows -- the information on the left-hand side
6 shows the various accounts that the government asked me to look
7 at with respect to this analysis for Currency Enthusiasts,
8 Collectables Club, and Collecting Club. And you can see that
9 there's a number of accounts held at Bank of America, Citibank,
10 Chase, Tampa Bay Federal, and Regents Financial. And it
11 provides a column that lists all the account numbers for those
12 accounts, and then the date range that I analyzed.

13 And then on the right-hand side of the chart I show
14 the total in-flows and out-flows, and then in some cases there
15 was an ending balance in the account.

16 Q. What was the total in-flows into the various accounts
17 associated with Currency Enthusiasts, Collectables Club, and
18 Collecting Club?

19 A. So altogether, as shown at the bottom of the chart on slide
20 100, there was an aggregate amount of in-flows during the
21 periods that I analyzed totaling \$6,379,790.24.

22 Q. And what was the period of time that was covered by your
23 analysis of the bank records that were available to you?

24 A. So for each account, it varied depending on the period in
25 time in which there was activity and for which I had records.

H37OLEB4

Rollins - Direct

1 Generally, it covered from -- if you look at the first row, it
2 starts April 30th, 2013, and if you look at the last row, the
3 last date is July 24th, 2015.

4 Q. What was the total out-flow from those accounts during that
5 time period?

6 A. Total out-flow was \$6,309,840.71.

7 Q. What's summarized on slide 101?

8 A. So within that analysis I was asked to look for payments to
9 one particular company, and the company was named Intelligent
10 VR, LLC.

11 Q. And how much did Intelligent VR receive out of the bank
12 accounts that we were just talking about?

13 A. So I identified payments from Collectables Club account in
14 the amount of \$17,390.36 and from Currency Enthusiasts in the
15 amount of \$5,000. And additionally, I identified payments to
16 Intelligent VR from Anthony Murgio in the amount of \$5,722.36.

17 Q. Were those, based on your separate examination of bank
18 records, associated with Anthony Murgio personally?

19 A. That's correct.

20 Q. And what's summarized on slide 102?

21 A. So slide 101, I provided the aggregate amounts for each of
22 those senders that were sent to Intelligent VR, and in this
23 case, on slide 102, I provided details on the individual
24 transactions that comprised that summary.

25 Q. And in conducting your analysis, did you review any other

H37OLEB4

Rollins - Direct

1 records associated with these payments?

2 A. Yes. So many of these payments were ACH payments, so I
3 reviewed a series of ACH records that contained some of the
4 transactions. And as I've indicated in the chart, you see that
5 there's four transactions; one on August 8th, 2014, another on
6 September 2nd, 2014, one on October 2nd, 2014, and then finally
7 on October 30th, 2014.

8 For those four transfers I identified in the ACH
9 records the recipient, instead of being identified as
10 Intelligent VR, it was identified with the name Yuri Lebedev.

11 Q. Okay. Let's switch gears again and go to the final part of
12 your presentation, I believe; is that right?

13 A. That's correct, yes.

14 Q. So you talked about at the beginning that you performed a
15 location analysis; is that right?

16 A. That's correct.

17 Q. Can you explain to the jury what you mean by "location
18 analysis".

19 A. So what counsel for the government asked me to do is to
20 take a look at the records, both with respect to the Hope
21 Cathedral and Trevon Gross credit cards, as well as for the
22 accounts associated with the Currency Enthusiasts, Collectables
23 Club, and Collecting Club, to identify transactions for which
24 location information was reported.

25 So for example, if it's a credit card expense or

H37OLEB4

Rollins - Direct

1 credit card purchase, if there's indications of the location of
2 the vendor for which that purchase was made.

3 Q. Just backing up to slide 100, the summary of the various
4 bank accounts associated with Collectables Club and other
5 entities, did you find whether Anthony Murgio was a signer on
6 any of those accounts?

7 A. I believe I did, but I don't recall which one.

8 Q. You'd have to look at the underlying records?

9 A. I'd have to look at --

10 Q. The account opening records?

11 A. Yes.

12 Q. Sorry. Okay. So let's begin with the location analysis
13 relating to --

14 MR. KLINGEMAN: Before we go there I have an objection
15 specifically to slide 104.

16 MR. NOBLE: Can we take that down from the jury,
17 Ms. Grant? I'll bring up 104 for just the parties.

18 THE COURT: Grounds, Mr. Klingeman?

19 MR. KLINGEMAN: There's no basis for the headline.

20 MR. NOBLE: I can lay a foundation, your Honor.

21 MR. KLINGEMAN: That's not true, your Honor, for the
22 subsequent slides, but it's true for this slide.

23 THE COURT: Can Ms. Grant redact for this slide
24 given -- for this slide redact the --

25 MR. NOBLE: Sure. We'll move on, and we can redact

H37OLEB4

Rollins - Direct

1 this one before it's published to the jury.

2 THE COURT: All right.

3 MR. NOBLE: Let's go to slide 105. Can we bring that
4 back up for the jury?

5 THE COURT: Which is before -- Mr. Klingeman, I
6 understand you to say you don't have the same objection for
7 this one.

8 MR. KLINGEMAN: Your Honor, just to be clear, subject
9 to what we talked about earlier, I do not have an additional
10 objection to 105 through 112.

11 THE COURT: Thank you.

12 Go ahead. You may publish 105.

13 BY MR. NOBLE:

14 Q. What were you asked by the government to do with respect to
15 the location analysis for Mr. Gross' transactions?

16 A. So again, I was asked to look at the bank records for the
17 bank accounts that I had access to, as well as the credit cards
18 accounts that I had access to, which I had talked about earlier
19 in my testimony, and to look for transactions in which there
20 was location information provided in the descriptions.

21 Q. Were you asked to limit the location to any particular
22 location?

23 A. I was asked to look specifically with respect to
24 transactions where the information indicated New York,
25 New York.

H37OLEB4

Rollins - Direct

1 Q. So what did you find overall with respect to the analysis
2 of Mr. Gross' financial records?

3 A. So in my analysis, there were transactions for which there
4 was location information, but then there were also a number of
5 transactions for which there wasn't location information.

6 So based off of the transactions for which there was
7 information provided that indicated location, I was able to
8 identify what appeared to be three periods of activity in
9 New York, and that's what I've depicted on the slide. I'm
10 sorry, seven periods of activity.

11 Q. Was your analysis limited to transactions that were
12 traceable to the ten transactions that you testified about
13 earlier?

14 A. No, it was not.

15 Q. So this was, to be clear, any transaction that you saw in
16 Mr. Gross' financial records for which there was location data
17 indicating a New York, New York connection.

18 A. That's correct, which included both transactions relevant
19 to the traceable plus other transactions that weren't.

20 Q. So let's begin with the first period. What was the date in
21 that period?

22 A. So the first period involves transactions where there's
23 location information in New York, and all of those transactions
24 were dated May 3rd, 2014.

25 Q. What was the date of the second period?

H37OLEB4

Rollins - Direct

1 A. It was May 8th, 2014.

2 Q. What were the transactions on that date?

3 A. There is a \$52 purchase at a Show Biz Parking, and there
4 was a \$15 purchase at Imperial Theater.

5 Q. What was the period covered by period number 3?

6 A. Period number 3 was June 6, 2014 to approximately
7 June 13th, 2014.

8 Q. Why do you say "approximately"?

9 A. So from the records there were transactions that occurred
10 both on June 12th and June 13th where there's information that
11 indicated a location in New York. However, based off of my
12 review of the records, it wasn't clear as to whether or not
13 those may have been delayed postings or delayed clearing of the
14 transactions. I identified information that the card was used
15 on June 12th, 2014 to check into a hotel in New Jersey, which
16 indicated that it's possible that on the 13th the user was no
17 longer in New York.

18 Q. So what transactions did occur during this time period?

19 A. So during this time period, I identified hotel expenses for
20 Marriott Marquis, and those were dated June 7th through
21 June 10th, 2014; I identified meals, and the meals ranged in
22 dates from June 6th, 2014 to June 12th, 2014; and then I
23 identified two taxi expenses on June 7th and June 13th, 2014.

24 Q. Let's just back up again. You have in the bottom
25 right-hand side a couple bullets. What is written there?

H37OLEB4

Rollins - Direct

1 A. So on the bottom right there it indicates that two of these
2 purchases, the Rosa Mexicano and Havana Central, if you recall,
3 were traceable back to the third transfer that I was asked to
4 look at.

5 Q. What was the period of time covered in period 4?

6 A. And period 4 was November 23rd to November 24th, 2014.

7 Q. And what transactions did you see on those dates?

8 A. As indicated on the slide, a series of purchases at
9 shopping stores. So Thomas Pink, Apple, and Saks Fifth Avenue,
10 as well as meals on the 23rd and 24th, and hotel expenses on
11 the 23rd and 24th.

12 Q. What period of time was covered in period 5?

13 A. And period 5 was December 23rd, 2014.

14 Q. And what transactions did you see on that date?

15 A. I saw two purchases at what appeared to be stores, American
16 Eagle Outfitters and Niketown New York, as well as a taxi
17 charge on the 23rd.

18 Q. What time period is covered in period 6?

19 A. Period 6 is February 12th to February 14th, 2015, and
20 February 17th, 2015.

21 Q. What transactions occurred on those dates?

22 A. There were hotel expenses, meal expenses, taxi expenses,
23 and there was a cash withdrawal on February 17th, 2015.

24 Q. What period of time is covered in period number 7?

25 A. Period number 7 is April 24th to April 29th, 2015.

H37OLEB4

Rollins - Direct

1 Q. What transactions occurred in that period?

2 A. There were purchases at Marriott Marquis Hotel, purchases
3 at B&H Photo Video, there was a meal purchase at Carmine's, and
4 there were a limo service on April 24th, 2015.

5 Q. Let's switch to the location analysis that you performed
6 with respect to Anthony Murgio and the various bank accounts
7 associated with Collectables Clubs and the related entities.
8 Which accounts did you use to conduct this analysis?

9 A. So for the Anthony Murgio analysis, there were five debit
10 cards in which I identified records that indicated location
11 information.

12 Q. And those were summarized on slide 113?

13 A. Those are summarized on slide 113.

14 Q. Let me back up a second. With respect to the location
15 analysis that you performed for Anthony Murgio, was that
16 limited to New York or did it include transactions that
17 occurred in other places?

18 A. It included other locations, as well.

19 Q. So let's start with New York. How many periods of activity
20 on the debit card transactions that you looked at occurred in
21 New York?

22 A. I'm sorry. Can you repeat that?

23 Q. I'm sorry. That was a little convoluted.

24 For how many periods of time did you identify where
25 there was debit card activity in New York for Anthony Murgio?

H37OLEB4

Rollins - Direct

1 A. As shown on slide 114, I identified 14 separate periods.

2 Q. 14 or 15?

3 A. I'm sorry, 15. 15 separate periods.

4 Q. And those periods of time are summarized here on 114?

5 A. Those periods are summarized on slide 114.

6 Q. We're not going to walk through each one, but what were
7 some of the examples of transactions that you saw on those
8 dates?

9 A. So what I provided here is just an overview of some
10 examples, not necessarily for each period, but just overall.

11 There was a large purchase, \$5,181.50, at
12 Tiffany & Co., purchases at Stanton Social, various other
13 restaurants, there was a purchase at Macy's for \$139.69, and
14 then, as you can see, various times taxi services were used.

15 Q. Did you look at transactions that Anthony Murgio conducted
16 in Lakewood, New Jersey?

17 A. Yes, I did.

18 Q. And how many periods of activity did you identify?

19 A. I identified what appeared to be one period.

20 (Continued on next page)

H37KLEB5

Rollins - direct

1 BY MR. NOBLE:

2 Q. What was the period of time?

3 A. November 25th, 2014, to December 1st, 2014.

4 Q. What were some of the transactions you saw in that period
5 of time?

6 A. That included hotel expenses at Best Western, the expense
7 at a restaurant, LIS Garden Restaurant, and a purchase at
8 7-Eleven.

9 Q. How about any transactions in Moscow, Russia?

10 A. I identified what appeared to be six periods of activity
11 involving purchases in Moscow, Russia.

12 Q. Are those summarized on slide 118?

13 A. Those are summarized on slide 118.

14 Q. What are some of the examples of transactions you saw in
15 Moscow?

16 A. And those examples included purchases at restaurants, bars,
17 hotels, and car rental purchases.

18 Q. Any transactions that you identified as having occurred in
19 Montreal, Canada, for Anthony Murgio?

20 A. Yes.

21 Q. How many periods of time did you identify associated with
22 Montreal?

23 A. I identified what appeared to be six periods of activity,
24 and I've summarized those on slide 120.

25 Q. What were some of the examples of transactions you saw in

H37KLEB5

Rollins - direct

1 Montreal?

2 A. Some of the examples, again, included purchases at
3 restaurants, hotels, what appeared to be beauty or -- other
4 beauty salon or a beauty store, La Clinique, and taxi/limousine
5 services.

6 Q. Any transactions identified in Tel Aviv, Israel, for
7 Anthony Murgio?

8 A. Yes.

9 Q. How many periods of time did you find?

10 A. I identified what appeared to be two periods of activity,
11 and I have summarized those on slide 122.

12 Q. In general, what type of transactions did you see there?

13 A. Generally, food, hotel, and car services.

14 MR. NOBLE: No further questions.

15 THE COURT: All right. There was one that we paused
16 on, Mr. Klingeman. The jury's lunch is here, so we'll send
17 them to lunch, and then if we need to come back to that, we
18 can.

19 Members of the jury, your lunch is here. I do want
20 to -- I think, realistically, both because counsel and I have
21 some matters to discuss, and I'm going to let them grab a
22 granola bar at least, I think, realistically, we'll get you
23 back in 45 minutes, and let you know you have that time. Thank
24 you so much. See you in 45.

25 (Continued on next page)

H37KLEB5

Rollins - direct

1 (Jury not present)

2 THE COURT: Mr. Rollins, you may step down for the
3 lunch break, and I will ask that you be outside the courtroom
4 in 45 minutes, so that we can resume. Thank you.

5 THE WITNESS: Thank you, your Honor.

6 (Witness temporarily excused)

7 THE COURT: Mr. Klingeman, did you want to take up
8 that one slide?

9 MR. KLINGEMAN: Yes, I have two points to make.

10 THE COURT: Can you remind me of the number, please?

11 MR. KLINGEMAN: Slide 104 in Government Exhibit 900.

12 THE COURT: Thank you.

13 Go ahead.

14 MR. KLINGEMAN: Your Honor, the headline on the slide
15 is "Location Analysis, Trevon Gross, New York, New York." And
16 then there's a list of account types and other bank-related
17 information. There is no indication how this information
18 relates in any way to placing Mr. Gross in New York, in
19 contrast to the slides that follow it. What I infer is that
20 these banks or financial institutions have some presence in
21 New York, and perhaps that's what the government is suggesting
22 is the link, but I don't see it. And it's certainly not clear
23 from either the testimony or the slide itself.

24 MR. NOBLE: We'll redact the New York, New York.

25 THE COURT: Okay. Does that do it, Mr. Klingeman?

H37KLEB5

Rollins - direct

1 MR. KLINGEMAN: I'd like the slide itself removed
2 because without the header line, it's utterly meaningless.

3 MR. NOBLE: Well, what this is -- I can redirect on
4 this -- these are the account records from which the location
5 analysis was derived. These are just the bank statements of
6 credit card statements that he looked at to conduct the
7 analysis that follows.

8 And --

9 MR. KLINGEMAN: We certainly have testimony on that
10 point.

11 THE COURT: Well, I assume that the underlying
12 exhibits, 800-B, 814, 811, 813-A, bear that out. I see, it's
13 just that it's going to explain what follows?

14 MR. NOBLE: Yes, exactly.

15 THE COURT: Well, if there's testimony -- so, you can
16 show it to the witness and lay a foundation.

17 MR. NOBLE: Should I reopen the direct just to lay the
18 foundation, or should I do it on redirect?

19 THE COURT: Well, I actually was trying to stop you
20 before you ended.

21 MR. NOBLE: Oh, sorry.

22 THE COURT: Because you had proposed a limiting
23 instruction.

24 MR. NOBLE: I think we can still deliver that when the
25 jury comes backs, perhaps before Mr. Klingeman starts his

H37KLEB5

Rollins - direct

1 cross, or I can reopen my direct, and then I can lay the
2 foundation for this slide, we can show it to the jury after
3 it's been redacted, and then I can ask the Court to provide the
4 limiting instruction that the parties have agreed upon at that
5 time.

6 THE COURT: All right.

7 Mr. Klingeman?

8 MR. KLINGEMAN: I just wanted to make one other point
9 for the record. Your Honor had made a finding, in support of
10 admitting the evidence, that there would be no prejudice to the
11 defense, the Defendant Gross. I would specifically point to
12 slides 38, 77, and 98, in which this witness purports to make a
13 dollar-for-dollar correspondence between sources of funds and
14 the expenditure of funds, and that evidence is unduly
15 prejudicial, given the fact that it's based on this arbitrary
16 selection of the FIFO method instead of direct tracing method
17 he testified about. So, I just want to make that point.

18 THE COURT: Okay.

19 Mr. Noble, anything you want to say?

20 MR. NOBLE: No. Just we would rely on our prior
21 argument in support of -- that this is just an assumption that
22 he applied, and it's fair game for cross-examination for
23 defense to try to undermine the analysis.

24 THE COURT: It certainly can be crossed on, and, as I
25 said earlier, I'm happy to hear if the defense would like to

H37KLEB5

Rollins - direct

1 bring in some comparable summary witness.

2 I wondered if, in the limiting instruction, the issue
3 might be further addressed, too. So here's what I'll
4 suggest -- and it's derived from a Sixth Circuit -- it combines
5 what you had proposed and then is derived from a Sixth Circuit
6 case, I think I can get you the cite, but the instruction would
7 read -- or I would read: "The slides prepared by Mr. Rollins
8 are not evidence, but, rather, an aid to the jury. It is for
9 the jury to determine for itself whether the slides fairly and
10 accurately summarize the underlying evidence." That's what you
11 had proposed this morning. "Further, you heard the witness
12 testify that he applied a particular accounting method in
13 preparing some of these slides. The witness testified that he
14 was instructed by the government to apply this method. This is
15 an opinion witness, not an expert witness. You should not in
16 any way rely on the witness' testimony to establish that the
17 accounting method was itself a proper one. The witness was
18 offered solely to help the jury apply the method and not in any
19 way to determine whether this method, rather than others, is
20 the most helpful in understanding the evidence."

21 MR. NOBLE: We have no objection to that, your Honor.

22 THE COURT: Mr. Klingeman?

23 MR. KLINGEMAN: I certainly don't have any objection
24 to it. If I could --

25 THE COURT: Look at it?

H37KLEB5

Rollins - direct

1 MR. KLINGEMAN: -- respectfully request a hard copy.

2 THE COURT: No, absolutely. I have the same issue,
3 especially after a long trial, when I'm out in the world
4 talking to people, I look down as if there will be a LiveNote
5 there because I didn't catch what they say. My clerk will
6 print copies. And I'm open to suggestions on language.

7 I don't know that we need to do this right now. I do
8 want to state my reasons for the order with respect to the
9 ruling with respect to Ms. Beyer. I can do that when we come
10 back from lunch. Are there -- maybe we can get an update in
11 the meantime?

12 MS. CHOI: That's why I'm here, your Honor.

13 THE COURT: Could you pull up the microphone?

14 MS. CHOI: Okay.

15 So, I spoke this morning with general counsel at DHS,
16 who ran it up their internal chain in the counsel's office.
17 They indicated a few things I wanted your Honor to know in the
18 context of your ruling or your potential ruling, although I
19 think we know sort of the contours of it, generally speaking.

20 They made the point to me that I thought was one that
21 I should relay to the Court, which was that they believe that
22 if there had been an investigation, one way or the other, of
23 Ms. Beyer through the general course, that she would not have
24 been aware of that, because it's part of Secret Service's
25 general means to deal with disciplinary issues, that they don't

H37KLEB5

Rollins - direct

1 inform the person immediately that that's what's going on, they
2 try to do other types of analysis. And I think given that
3 circumstance, and given your Honor's prior inclination, that
4 the efficacy of whatever the government or the Secret Service
5 may have done to follow up on this issue would be outside the
6 purview of the jury. I think this is just another reason why
7 that witness would not have personal knowledge as to that.

8 So they saw no reason to have any problem with her
9 testimony with regard to the one limited function, which I
10 explained to the general counsel's office would be establish
11 the contours of what she did discuss with Jose Freundt, to the
12 best of her recollection, about his status as an employee, what
13 she does not recall, which is having a specific conversation
14 about the bank accounts or the past payments, and that she
15 would not have instructed him to go and take the money out of
16 the account.

17 So that's what I represented to general counsel that I
18 expected the contours of the testimony would be limited to.
19 Given that circumstance, they said they didn't see any issue
20 with it. We've also talked to Ms. Beyer about her
21 availability, and by that I mean not myself, but a Secret
22 Service agent who has been helping in this process, and that
23 agent has reported back that she is attempting to get on a
24 5:45 a.m. flight tomorrow morning, which would land her in
25 Newark at approximately, I think, 11:00, so that she would come

H37KLEB5

Rollins - direct

1 straight to the courthouse afterwards.

2 She is having a medical procedure this afternoon, but
3 she hopes to be able to make that happen, and I think she
4 understands that it's the Court's wish that she get here as
5 quickly as possible. She's making every effort for that to
6 occur.

7 THE COURT: All right.

8 MS. CHOI: I don't take, from what your Honor said
9 earlier, that we would need any other witnesses, either
10 Mr. Wozniak or Mr. Jarrow. I note again that the government's
11 position with regard to Mr. Wozniak would be tangentially --
12 well, it would be relevant, but it would only add a little bit
13 more to what would already be well-established with Ms. Beyer
14 and would be otherwise cumulative. And with regard to
15 Mr. Jarrow and with regard to any other questions they might
16 ask of Ms. Beyer, the government would note that its position
17 is that that would be beyond the scope of what it understands
18 the Court's inclination to be, and it has good-faith reasons to
19 assert that that would not be properly within the purview of
20 the jury.

21 THE COURT: That sounds consistent with where I am.
22 I'll give, just in terms of the scope of what's anticipated, a
23 last opportunity to make an argument for something broader than
24 what we have now discussed.

25 MR. CREIZMAN: No, your Honor.

H37KLEB5

Rollins - direct

1 THE COURT: Mr. Klingeman?

2 MR. KLINGEMAN: No, we're content with that, as I've
3 indicated.

4 THE COURT: All right.

5 So I am here addressing what has come in as the
6 government's motion to preclude the defendants from admitting
7 extrinsic evidence to contradict a statement made by Jose
8 Freundt that a government agent told him that he could take,
9 quote, a nice little bonus, end quote, from the bank account of
10 Coin.mx before it was shut down for illegality activity.
11 That's the trial transcript at 2148.

12 The government contends that such extrinsic evidence
13 would not be admissible to impeach a witness' credibility
14 pursuant to Federal Rule of Evidence 608(b). The government
15 did note that extrinsic evidence may be, "admissible for the
16 purpose of impeachment by contradiction," a rule -- and here
17 I'm quoting Ramirez -- "which operates as a limited exception
18 to Rule 608(b)." And that's United States versus Ramirez, 609
19 F.3d 495 (2d Cir. 2010).

20 The government argued, however, that the exception is
21 not available here because, first, Freundt testified about the
22 agent's statement on cross-examination, not in direct, and,
23 second, that the issue is insufficiently material. Docket
24 No. 424 at 4. I do disagree.

25 First, though, it is true that the Second Circuit has

H37KLEB5

Rollins - direct

1 never extended the impeachment by contradiction doctrine to
2 statements made by a witness on cross-examination, it has
3 explicitly noted that the question is an open one. See Ramirez
4 at 499. See also United States versus Shoreline Motors, 413 F.
5 App'x 322 (2d Cir. 2011).

6 Explaining why a Court might not extend this doctrine
7 to statements made on cross-examination, one treatise has
8 explained that a cross examiner is more able to open the door
9 for himself than is a direct examiner, and, thus, that cross
10 examiners could use leading questions to put words into the
11 witness' mouth and thereby trap him into saying something that
12 can be contradicted or they can dredge up any embarrassing
13 conduct in the witness' life, which he would be prone to deny,
14 especially if irrelevant to the issues in the case. That's 28
15 federal practice and procedure evidence at Section 6119.

16 In this case, none of the reasons for restricting the
17 availability of the impeachment by contradiction rule to direct
18 examination apply to Freundt's testimony or to the defendants'
19 motion to admit extrinsic evidence to impeach it. First,
20 defense counsel did not trap the witness into a false
21 statement. Defense counsel did no more than ask the witness
22 about a statement he had verbatim made to the government in
23 previous interviews.

24 Second, the subject was hardly irrelevant to the
25 issues in this case; that is, whether Mr. Freundt was induced

H37KLEB5

Rollins - direct

1 by a government agent or suggested to by a government agent to
2 take money out of a Coin.mx bank account prior to the
3 government shutting Coin.mx down, is relevant to Mr. Freundt's
4 insistence in cooperating with the government and potentially
5 to Freundt's own behalf as to the legality of Coin.mx, an issue
6 potentially probative of Yuri Lebedev's knowledge.

7 Finally, and relatedly, the statement, though,
8 elicited in cross was highly interrelated material the
9 government brought up on direct and, indeed, would have been an
10 appropriate topic for direct. See trial transcript at 2141 and
11 at 1959 to 60. In fact, it's not clear to the Court why the
12 government didn't raise the issue on direct, given its general
13 questioning designed to air any potential motivations on the
14 part of the witness to testify truthfully or otherwise.

15 In light of these considerations, there is not a
16 justification to refuse to apply the impeachment by
17 contradiction rule simply because the particular purported
18 false testimony was elicited not on direct, but on cross.

19 Second, the Court disagrees with the government that
20 the issue in question is not material. The government does
21 cite to cases outside the Second Circuit for the proposition
22 that testimony sought to be contradicted must be material to a
23 defendant's guilt or innocence for the impeachment by
24 contradiction rule to be successfully invoked. Docket number
25 434 at 4. As an initial matter, these cases use the term

H37KLEB5

Rollins - direct

1 material not to mean the truth or falsity of the fact in
2 question, but must itself be significant to the issues at
3 trial, but that the use of the evidence to impeach the witness'
4 credibility must be sufficiently important to justify the
5 introduction of the evidence. See United States versus
6 Benedetto, 571 F.2d 1246 (2d Cir. 1978). I'm quoting: "Once a
7 witness, especially a defendant witness, testifies as to any
8 specific fact on direct testimony, the trial judge has broad
9 discretion to admit extrinsic evidence tending to contradict
10 the specific statement, even if such statement concerns a
11 collateral matter in the case."

12 The cases on which the government relies for its
13 materiality requirement, thus, do no more than subject the
14 evidence to Rule 403. See United States versus Fonseca, 435
15 F.3d 369 (D.C. Cir. 2006), affirming that impeachment by
16 contradiction is a well-recognized tool for exposing a witness'
17 lack of credibility, but noting that rule of evidence 403
18 imposes, as it does for all evidence, restrictions on
19 admission. A similar cite can be found at the First Circuit
20 case, United States versus Perez-Perez, 72 F.3d 224.

21 Applying principles of Rule 403 to the evidence the
22 defense seeks to introduce, the Court determines that the
23 evidence probative value is not outweighed by its potential to
24 cause unfair prejudice, confuse the issues, mislead the jury,
25 cause undue delay, waste time or result in the needless

H37KLEB5

Rollins - direct

1 presentation of cumulative evidence.

2 First, Mr. Freundt's testimony is highly significant
3 to the government's case and touches on the guilt of both
4 defendants. Evidence showing not only that Freundt, a key
5 cooperating witness for the government, did not tell the truth
6 on the witness stand, but specifically that he said something
7 not true about government agents telling him it was appropriate
8 to raid the bank account of a company about to be shut down for
9 illegal activity is highly probative. See Fonseca, 435 F.3d at
10 375.

11 The second introduction of the contemplated extrinsic
12 evidence will not be highly disruptive or cause undue delay.
13 The government represents that Ms. Beyer, interviewed by a
14 fellow Secret Service agent on March 4th, 2017, represented
15 that she did not remember Freundt discussing salary and stated
16 unequivocally that she did not instruct Jose Freundt to remove,
17 transfer, or take money or Bitcoin from any Coin.mx-related
18 accounts. The Court sees little danger that the trial would
19 evolve into an extended investigation of any collateral matter,
20 given the clarity and brevity of Ms. Beyer's contradicting
21 testimony.

22 In short, because the contemplated extrinsic evidence
23 is admissible to impeach the contradictory statement by Jose
24 Freundt, because the evidence is not barred by Rule 403, I will
25 allow it to come in. The contours of what the Court considers

H37KLEB5

Rollins - direct

1 appropriate within the four corners of this ruling are
2 specifically as discussed. Ms. Beyer will be called, and the
3 questions to be asked are very limited to extracting what she
4 recalls and what she would say about whether she encouraged and
5 suggested to Mr. Freundt that he help himself to a nice little
6 bonus from the bank account of Coin.mx before it was shut down.

7 So, there's that. We'll break for lunch. Will there
8 be matters to discuss about the next segment before we've got
9 cross and then the government intends to rest?

10 Oh, and, Mr. Noble, it is as we've discussed, you'll
11 come back, deal with the one exhibit.

12 MR. NOBLE: I'll ask to reopen my direct.

13 THE COURT: And I'll do the limiting instruction that
14 we got agreement on it.

15 MS. CHOI: Your Honor, I think the only issue is, I
16 just want to confirm, since we haven't had an opportunity to go
17 through the defense exhibits, there are a few things that are
18 at play right now. One is we need to confer with Mr. Lebedev's
19 counsel. I don't know if the representation is still that
20 Mr. Lebedev is not going to testify, but we just want to go
21 through the exhibits that we were given earlier this morning
22 and note our objections prior to the start of the defense case.

23 Second, we're still receiving documents from
24 Mr. Gross' counsel. I believe that those are the ones that are
25 responsive to the if-as-when subpoena. We have specific

H37KLEB5

Rollins - direct

1 concerns about certain of those documents, which we can raise
2 with you, but we wanted to flag that, and the nature of that
3 production, mainly because -- things are moving quickly, but we
4 just got a working password for some of it, so we haven't even
5 been able to download and review at least part of that
6 production.

7 So I would just want to get a sense from defense
8 counsel what the order of witnesses would be with regard to
9 Mr. Gross' case -- well, confirmation from Mr. Lebedev's side
10 that the exhibits that they had already previously noticed to
11 us were sufficient, some sort of understanding as to the order
12 of Mr. Gross' witnesses as they anticipate, and whether or not
13 there would be any documents that would be necessary for them,
14 and the status of the decision of whether or not Mr. Gross will
15 be testifying, with that last one, both with regard to
16 Mr. Gross and with regard to Ms. Larkins being wrapped up in
17 these documents that we have yet to even review because we just
18 downloaded them.

19 THE COURT: All right.

20 Mr. Creizman? I think the first question is just, the
21 exhibits that you've provided to the government, where you are
22 now as to what Mr. Lebedev's defense case will be?

23 MR. CREIZMAN: Oh, Mr. Lebedev is not going to
24 testify. We're going to confer with the government about those
25 exhibits, and, hopefully, we can come to a resolution.

H37KLEB5

Rollins - direct

1 THE COURT: And no additional exhibits beyond what
2 you've already provided them?

3 MR. CREIZMAN: No, your Honor.

4 THE COURT: Okay.

5 MS. CHOI: Are you going to plan -- the other issue is
6 just whether or not you plan to publish to the jury or just
7 argue --

8 MR. CREIZMAN: I do not plan to publish.

9 MS. CHOI: Okay. So I guess as to Mr. Gross.

10 THE COURT: Mr. Klingeman? It sounds like we're going
11 to get to Mr. Gross' defense case fairly quickly, follow
12 cross-examination?

13 MR. KLINGEMAN: Yes. I do want to note, however, at
14 the conclusion of the government's case, I would like to place
15 on the record my intent to move for a motion under Rule 29,
16 and, obviously, I'd want to do that outside the presence of the
17 jury.

18 THE COURT: Yes. Wherever we are when the
19 government's rest, I'll give the jury a break, and bases for
20 any motions can be made then.

21 MR. KLINGEMAN: May I ask of the Court: I would
22 simply make the motion as a placeholder and then deal with it,
23 so we can continue with the jury, but --

24 THE COURT: That's fine with me.

25 Everybody agree?

H37KLEB5

Rollins - direct

1 MS. CHOI: Sure.

2 MR. KLINGEMAN: And then once the jury is summoned for
3 the defense case --

4 THE COURT: Just to go back, do you mean you want
5 to -- after the government rests, we'll do a sidebar, and
6 you'll just state your objection?

7 MR. KLINGEMAN: Exactly. Just a brief --

8 THE COURT: I'm sorry, state your placeholder motion?

9 MR. KLINGEMAN: Yes.

10 THE COURT: And --

11 MR. KLINGEMAN: Making the motion, and preserving
12 argument, and having the Court reserve.

13 THE COURT: Right.

14 MR. KLINGEMAN: Once we resume, I anticipate that
15 Mr. Lebedev will stand and offer his exhibits and then rest,
16 and then we'll be ready to call three character witnesses we've
17 identified to the government, and then go right into the
18 testimony of Mr. Gross. We're still waiting on the witness,
19 Loretta Larkins, but we're not going to hold up Mr. Gross,
20 obviously, for that. And if Mrs. Larkins were to testify, she
21 would follow Mr. Gross, and then we would conclude with
22 Ms. Beyer tomorrow.

23 THE COURT: Okay. Mr. Creizman?

24 MR. CREIZMAN: I'm sorry, your Honor. In terms of the
25 likely Rule 29 motion that I will be making at the close of the

H37KLEB5

Rollins - direct

1 government's case, when would we --

2 THE COURT: When the government rests, I'll call a
3 sidebar.

4 MR. CREIZMAN: Okay.

5 THE COURT: And you can, as Mr. Klingeman indicated he
6 would do a placeholder motion, and I will reserve.

7 So, Ms. Choi, with respect to what Mr. Klingeman just
8 said, any follow-up?

9 MS. CHOI: Well, I think the issue we have is simply I
10 don't know if defense counsel intends to walk through exhibits
11 with Mr. Gross. I don't know -- they haven't been identified
12 to the government as such. We still haven't had an ability to
13 even look at the if-as-when subpoena return. So I think we're
14 a little concerned that depending on the speed of which this
15 happens, we're not going to be able to even digest the
16 materials that were given to us prior to the cross beginning of
17 Mr. Gross. Some of them are being literally returned within
18 the hour from Ms. Santillo, and we haven't been able to even
19 look at them because the password that was sent wasn't active.

20 MS. SANTILLO: Your Honor, I sent the exhibits last
21 night, and these are the defense exhibits. They should be
22 pretty easy to get through. We did --

23 Did you get the new password?

24 MS. CHOI: Yes, and we've downloaded. I'm just saying
25 we haven't been able to look at it since --

H37KLEB5

Rollins - direct

1 THE COURT: Well, look now, and when we return from
2 lunch, you'll let me know.

3 MS. CHOI: Sure, your Honor. I just want to put --

4 THE COURT: You flagged it.

5 MS. CHOI: It's not one or two documents. They're
6 entire -- it's like hundreds of documents that have just been
7 dumped on us. So, I just want to reserve the government's
8 rights to be able to look through it, given that it's untimely.
9 We also believe that they would have been responsive to prior
10 subpoenas that have been served upon Hope Cathedral.

11 THE COURT: Well, look, as I've said to Mr. Klingeman,
12 look at them, we'll deal with them. I don't want to deal in
13 the hypotheticals. You flagged it. Look at them.

14 MS. CHOI: Sure.

15 THE COURT: And you have them now. You let me know
16 what is needed. But on the theory you can look at them, and we
17 can take them as they come, let me know if you have a specific
18 objection.

19 I let the jury out -- does anybody know what time it
20 was?

21 MR. KLINGEMAN: About a quarter of.

22 THE COURT: So it's now 1:00. So I'll see you in 20
23 minutes, please. Thank you.

24 MS. CHOI: Your Honor, we'll do our best to review.

25 THE COURT: Cub Scouts' motto. (Luncheon recess)

H37KLEB5

1 AFTERNOON SESSION

2 1:29 PM

3 (In open court; jury not present)

4 THE COURT: Anything that needs to be taken up in the
5 immediate?

6 MR. KLINGEMAN: No, your Honor.

7 MS. CHOI: Your Honor, just a status of our review, or
8 even looking at the Trevon Gross' production, the second
9 production: We haven't been able to see the first production,
10 which happened late last night. The second production appears
11 to be a 500 megabyte PST file that we were able to download,
12 but cannot load, meaning we haven't even been able to open it
13 as of yet. We have IT working on it as of now. For your
14 Honor's edification, 500 megabytes is quite a large amount.
15 With regard to emails, it's half of a gig. It depends on how
16 it's actually stored in terms of whether or not it contains
17 attachments or not, that we can actually see what the size of
18 that volume would be.

19 So, given, I think, the combination of the tardiness
20 of that and the fact that we haven't even been able to review
21 it prior to the beginning of the defense case, the government
22 would just ask that if we get to a point where Mr. Gross is
23 about to cross, or we're supposed to start cross, that we would
24 be able to have the ability to spend tonight to go through
25 those materials to make sure that we've had an opportunity to

H37KLEB5

1 review them, especially given -- and I think as we've already
2 noted to your Honor -- that there is a concern from the
3 government's perspective that these were documents that should
4 have been responsive to the Hope Cathedral subpoena that we had
5 issued, and that was due returnable at the beginning of trial,
6 for which we have not gotten adequate supplemental materials.

7 So we're just double-checking to see what the
8 situation is with regard to that.

9 MR. NOBLE: We've also reviewed at least some of the
10 proposed exhibits by Mr. Gross, and most of the emails, we
11 would have hearsay objections to. They may have a nontruth
12 purpose that they might offer or they may have an exception to
13 the hearsay rule that might apply, but from the face of it, a
14 lot of these are just hearsay. So we would object to the
15 admission of those exhibits during the examination.

16 THE COURT: All right. Do you want to address the
17 basic hearsay objection, Mr. Klingeman?

18 MS. SANTILLO: I can certainly address them. I don't
19 know what specific exhibit they're referring to at this moment,
20 but there is a series of emails that show sort of communication
21 between Anthony Murgio and Michael Murgio about whether
22 they're, you know, kind of hiding things from Trevon Gross.
23 And I am not introducing it for its truth, I'm introducing it
24 to show their motive and their intent.

25 THE COURT: You're introducing it to show what?

H37KLEB5

1 MS. SANTILLO: Their motive and their intent to
2 deceive Pastor Gross.

3 THE COURT: What's the relevance of their motive and
4 intent to deceive Pastor Gross?

5 MS. SANTILLO: Because they were trying to get onto
6 the board of the Hope Cathedral under false pretenses.

7 MR. NOBLE: Well, Judge, I think she means the credit
8 union. But to the extent that's the proffer, is to the
9 relevance, then it's being offered for its truth. It doesn't
10 go to Pastor Gross' state of mind, or to his motive, or for
11 some other proper purpose. It's going to a hearsay purpose of
12 proving up what Anthony Murgio and Michael Murgio were saying
13 to each other, that they had communications behind Trevon
14 Gross' back, and that's the only purpose for which they would
15 be relevant. And that's for the truth. It's pure hearsay,
16 it's coconspirator statements.

17 THE COURT: Well, it is coconspirator statements, so
18 it doesn't get in under that. The question is, is it excluded
19 from being admissible here as nonhearsay or under another
20 exception.

21 Let's do this. I appreciate you flagging it. Let's
22 bring in the jury, because I told them we would, we'll finish
23 this witness, with cross-examination, we'll break at that
24 point, at least for the sidebar on the Rule 29, we can do the
25 character witnesses, and kind of see where we are, and whether

H37KLEB5

1 we begin with Mr. Gross' testimony. It may be that we can
2 still have tonight to work these out or we take them one at a
3 time as they come.

4 Thank you.

5 MR. SHIN: Your Honor, one other thing. Mr. Creizman,
6 and Ms. Madrigal, and I --

7 THE COURT: I can't hear you.

8 MR. SHIN: Sorry. So Mr. Creizman, Ms. Madrigal, and
9 I, we conferred. We objected to certain exhibits on hearsay,
10 privilege, and other grounds. My understanding is that
11 Mr. Creizman has agreed to withdraw those particular exhibits.
12 And to the remaining exhibits, we have no objection.

13 MR. CREIZMAN: That's correct, your Honor.

14 THE COURT: Thank you so much.

15 Mr. Noble, can you give me a couple of examples of
16 the -- you said -- do I have marked defense exhibits?

17 MS. SANTILLO: I have -- they're in the
18 government's -- everything that I sent them last night is in
19 the government's production, and then I have a separate set of
20 defendants' exhibits. So I don't know which ones he's talking
21 about right now.

22 MR. NOBLE: I have in my mind what defense counsel
23 just handed us, which I think are copies of what was produced
24 last night, TG40 through TG50. I don't know if that's the
25 universe. Maybe defense counsel can clarify.

H37KLEB5

1 THE COURT: Do I have those?

2 MS. SANTILLO: I'm sorry, I'm getting copies for you
3 right now.

4 THE COURT: Oh, I didn't know if I had it in the
5 exhibit binder or not. I don't recall seeing it.

6 I'll consider the examples while we're -- I'll start
7 looking at them while we're going. But TG40 through 50 are
8 what --

9 MR. NOBLE: TG40 through TG50 are examples of what's
10 in my hand. Because I looked at what they sent last night, and
11 there seems to be some differences. So I looked at what they
12 sent last night over the lunch break, and now I'm seeing what
13 appear to be new ones and different ones.

14 To a certain extent, a lot of these are
15 communications -- some of these are communications between
16 Mr. Gross and other individuals. There may be a proper
17 nonhearsay purpose or exception, but a lot of these appear to
18 be -- we would have hearsay objections to.

19 There is also a TG48, it's what appears to be just a
20 strategic plan from HOPE FCU. I'm not sure of the source of
21 that document.

22 TG49 is also a strategic plan dated June 30th, 2012.
23 Again, we don't know the source of that document, or if it's
24 been authenticated, or what the foundation would be.

25 And then TG50 is an email between Trevon Gross and

H37KLEB5

1 Rico Hill, to which I think we would have hearsay objections.
2 They appear to be hearsay on their face. Although defense
3 counsel may be able to proffer some relevance, some nonhearsay
4 purpose that would be relevant or an exception to the hearsay
5 rule, but we have just not had that conversation with defense
6 counsel yet.

7 THE COURT: I'll look at examples as we get underway.

8 MS. SANTILLO: Do you want them right now?

9 THE COURT: Yes, if you would hand them up.

10 MR. NOBLE: Judge, in the meantime, the government
11 intended to --

12 THE COURT: Just one second.

13 (Pause)

14 MR. NOBLE: -- intended to offer three documents,
15 which are certified records from the bankruptcy of Charles
16 Blue, which are stamped, signed, and certified by the Clerk of
17 Court for the District of New Jersey, and we believe these are
18 self-authenticating under Section 902.2, at the very least, and
19 in addition, we believe they are relevant because they tend to
20 show that Mr. Blue was not someone who should have been
21 operating or been hired by Mr. Gross to operate the credit
22 union, as Ms. Flok testified that individuals with a bankruptcy
23 in their past would raise red flags if they were installed as
24 the CEO of a federal credit union. And we believe this goes
25 to, again, the lack of due diligence performed by Mr. Gross

H37KLEB5

1 when installing various individuals into the credit union to
2 operate it, not just Mr. Blue, but also Rico Hill, who had a
3 number of criminal convictions.

4 So we believe this is relevant, and these documents
5 are self-authenticating. For the record, they have been marked
6 Government Exhibits 865, 866, and 867, specifically the
7 bankruptcy filing, the order discharging the debtor, and the
8 final bankruptcy decree respectively.

9 THE COURT: And just so I understand the posture,
10 you're seeking to put those in as part of the government's
11 case? This is not about --

12 MR. NOBLE: Yes, this is part of the government's case
13 before we rest. So I wanted to raise it now.

14 THE COURT: Let me make sure I get it. They're
15 bankruptcy records of Mr. Blue?

16 MR. NOBLE: Yes.

17 THE COURT: And the proffered relevance, again, is?

18 MR. NOBLE: That Mr. Blue had a bankruptcy, and he was
19 installed as the CEO of the credit union, to operate the credit
20 union, by Mr. Gross, and the defense opened on the fact that
21 during at least some of the period of time that's relevant
22 here, where the credit union had a relationship with Kapcharge,
23 that it was Mr. Blue who was running the credit union, making
24 the decisions about whether to do business with Kapcharge, how
25 to do ACH processing, getting the credit union up to speed with

H37KLEB5

1 respect to ACH processing, so they could resume for Kapcharge,
2 and this goes to the level of diligence that Mr. Gross did or
3 did not do in selecting individuals who are operating the
4 credit union.

5 Another example is --

6 THE COURT: But it's not all diligence that's
7 relevant, right? It's just --

8 MR. NOBLE: But the defense opened on this, that
9 Mr. Gross was going to rely that Mr. Blue was running the
10 credit union, and this was an arm's-length transaction with
11 Kapcharge, and so to the extent any nefarious activity was
12 going on at the credit union, Mr. Gross was unaware of it
13 because Mr. Blue was the person in charge.

14 And this goes to the fact that Mr. Gross didn't do any
15 due diligence on the people who he brought into the credit
16 union to operate it. It doesn't shield him from the
17 relationship that he had with -- the ongoing relationship,
18 ongoing conspiracy with Kapcharge, to operate the credit union
19 in a way that was essentially a captive institution for
20 Kapcharge.

21 THE COURT: Okay.

22 Mr. Klingeman?

23 MR. KLINGEMAN: Your Honor, we object. Mr. Blue's
24 bankruptcy 16 years before the activities in this case is
25 irrelevant. It's excluded under Rule 404 as character evidence

H37KLEB5

1 for the first stated purpose that the government offered; that
2 is, Mr. Blue was not competent to run the credit union when he
3 was brought in to run it. And, further, it's irrelevant.

4 With respect to Mr. Gross' due diligence, there is no
5 indication from the evidence being offered -- that is, the
6 public records of the bankruptcy -- that Mr. Gross was aware of
7 it. It's certainly grounds, I'm asserting provisionally, for
8 cross-examination of Mr. Gross about the due diligence he did
9 or did not perform with respect to all of these various people
10 that we've heard so much about, but getting back to our debate
11 about impeachment by contradiction, the bankruptcy records
12 wouldn't even be admissible to impeach Mr. Gross unless there
13 was some indication that he was aware of them, and he denied
14 being aware of them.

15 So, for all of those reasons, we object to this
16 evidence.

17 MR. NOBLE: Well, Judge, it's relevant either way.
18 Either Mr. Gross knew about it and still hired Mr. Blue to
19 operate the credit union or he didn't know about it, and he
20 didn't do proper due diligence.

21 THE COURT: What testimony is there that proper due
22 diligence would have, (a), established that there was a
23 bankruptcy 16 years ago; and (b), that despite a bankruptcy 16
24 years ago, one isn't otherwise qualified for the position?

25 MR. NOBLE: Ms. Flok, from the NCUA, testified that

H37KLEB5

1 bankruptcy would raise a red flag that the credit union
2 officials -- I believe it was Ms. Flok or another NCUA witness
3 who testified that there was an expectation that if you're
4 operating the credit union, if you're operating ACH processing,
5 which Mr. Blue was going to be in charge of, that the credit
6 union has an obligation to run a background check on these
7 individuals. It was the testimony that was relevant to
8 Mr. Hill because he was installed in Florida to operate the ACH
9 processing. The same relevance applies to Mr. Blue, that he
10 was installed as the CEO of the credit union to operate the
11 credit union, to operate the ACH processing. And so it goes to
12 whether or not credit union officials, including Mr. Gross, the
13 chairman of the board, did any due diligence on people they're
14 bringing into the credit union.

15 THE COURT: I think the connection is too tenuous and
16 too much risk of prejudice. There are too many steps in that
17 analysis that I don't think are there. So on 401/403 grounds,
18 I sustain the objection.

19 We'll bring in the jury.

20 MR. KLINGEMAN: Did we need the witness?

21 THE COURT: Oh, we do.

22 Oh, actually, the limiting instruction. Did you
23 review the limiting instruction?

24 MR. NOBLE: We're fine with it, your Honor.

25 MR. KLINGEMAN: As am I.

H37KLEB5

1 THE COURT: Mr. Creizman, are you fine with the
2 limiting instruction?

3 MS. MADRIGAL: Yes.

4 THE COURT: Thank you, Ms. Madrigal.

5 You may take your seat, Mr. Rollins.

6 (Continued on next page)

H37KLEB5

Rollins - Direct

1 (Jury present)

2 THE COURT: Thank you so much, ladies and gentlemen of
3 the jury. I hope you had a pleasant lunch.

4 Mr. Noble.

5 MR. NOBLE: Thank you, Judge.

6 Yes, I neglected to ask one question or a couple of
7 questions of the witness, so I move to reopen my direct
8 examination.

9 THE COURT: Without objection?

10 MR. CREIZMAN: No objection.

11 MR. KLINGEMAN: No objection.

12 THE COURT: Go ahead. You may.

13 MR. NOBLE: Thank you, Judge.

14 Can we bring up slide 104 just for the Court, the
15 attorneys, and the witness. And this is slide 104 of
16 Government Exhibit 900.

17 JOHN ROLLINS, resumed.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. NOBLE:

20 Q. Do you see that on your screen, Mr. Rollins?

21 A. I do, yes.

22 Q. What does this slide summarize?

23 A. This summarizes the bank account and credit card accounts
24 that were relevant to the location analysis that I performed,
25 for which I found purchases with location information reported.

H37KLEB5

Rollins - Direct

1 Q. For whom was that location analysis?

2 A. And this was for the Trevon Gross location analysis.

3 Q. On the subsequent slides beginning at slide 105 and going
4 forward, was the information on those slides derived from the
5 account information that appears on slide 104?

6 A. Yes.

7 MR. NOBLE: Your Honor, at this time, the government
8 would offer and seek to publish slide 104 of Government Exhibit
9 900.

10 MR. KLINGEMAN: No objection.

11 MS. MADRIGAL: No objection, your Honor.

12 THE COURT: Thank you.

13 104 is admitted and available for publication.

14 (Government's Exhibit 900-104 received in evidence)

15 THE COURT: I said 104. 900-104.

16 MR. NOBLE: 900-104.

17 Q. Mr. Rollins, can you explain to the jury what's depicted on
18 this slide?

19 A. Sure. So, what I've depicted is a summary of the relevant
20 accounts. On the left-hand most column, I've indicated the
21 type of account. So, the first one was the checking account,
22 but the other four were credit card-related accounts.

23 The accountholder is indicated in the second column,
24 so the first one was Hope Cathedral, and the last four were
25 Trevon Gross.

H37KLEB5

Rollins - Direct

1 The bank is the third column. So the first was PNC,
2 then there's Capital One, American Express, American Express,
3 and then Chase. And the account numbers are indicated in the
4 fourth column, and then the fifth column has the sources.

5 MR. NOBLE: Let's flip to slide 105. And go to slide
6 106.

7 Q. So we previously, during your testimony, stepped through
8 the various periods of time in which you found activity in
9 New York; is that right?

10 A. That's correct.

11 Q. And that activity that you saw was on the bank statements
12 for the accounts that we looked at on slide 104?

13 A. That's correct.

14 MR. NOBLE: No further questions at this time.

15 Can we take that down.

16 And, your Honor, at this time, the parties would
17 request that the Court provide a limiting instruction that
18 we've agreed upon.

19 THE COURT: All right. Without objection?

20 MS. MADRIGAL: Without objection.

21 MR. KLINGEMAN: Yes, please.

22 THE COURT: All right.

23 Ladies and gentlemen of the jury, the slides prepared
24 by Mr. Rollins are not evidence, but, rather, an aid to the
25 jury. It is for the jury to determine for itself whether the

H37KLEB5

Rollins - Cross

1 slides fairly and accurately summarize the underlying evidence.

2 Further, you heard the witness testify that he applied
3 a particular accounting method in preparing some of these
4 slides. The witness testified that he was instructed by the
5 government to apply this method. This is an opinion witness,
6 not an expert witness. You should not in any way rely on the
7 witness' testimony to establish that the accounting method was
8 itself a proper one. The witness was offered solely to help
9 the jury apply the method and not in any way to determine
10 whether this method, rather than others, is the most helpful in
11 understanding the evidence.

12 All right?

13 MR. NOBLE: Thank you, Judge.

14 THE COURT: Mr. Noble?

15 MR. NOBLE: No further questions.

16 THE COURT: Thank you.

17 Mr. Creizman?

18 MR. CREIZMAN: No.

19 MS. MADRIGAL: Thank you, your Honor.

20 THE COURT: I'm sorry. Ms. Madrigal?

21 CROSS-EXAMINATION

22 BY MS. MADRIGAL:

23 Q. Good afternoon, Mr. Rollins.

24 A. Good afternoon.

25 Q. You work for RSM, correct?

H37KLEB5

Rollins - Cross

1 A. That's correct.

2 Q. And RSM is an audit tax and consulting firm?

3 A. That's correct.

4 Q. And you're actually a director of RSM?

5 A. That's correct.

6 Q. And you worked -- testified that you worked with a core
7 team of four or five on this presentation?

8 A. I thought I had said three or four, but --

9 Q. Three or four? I may have misheard that. A core team of
10 three or four.

11 And the presentation you just reviewed with the
12 government was actually not your first draft?

13 A. That's correct.

14 Q. In fact, it was, I believe, your fifth or sixth draft?

15 A. That's possible. I'm not sure.

16 Q. Okay. You don't have a recollection?

17 A. I don't have a recollection.

18 Q. Understood.

19 And each time you created a new version of the
20 presentation, you sent it to the government?

21 A. There may have been some interim changes that were made
22 that we didn't send a draft to the government, but we sent
23 drafts at various points to the government.

24 Q. Okay. So it's fair to say that the government provided its
25 comments to the presentation?

H37KLEB5

Rollins - Cross

1 A. Fair to say, yes.

2 Q. And made suggestions as to edits?

3 A. Fair to say, yes.

4 Q. And fair to say this was not an independent presentation by
5 RSM?

6 A. Can you --

7 Q. Sure.

8 A. -- specify what you mean by "independent"?

9 Q. Sure.

10 In other words, you didn't just create your own
11 presentation based on the raw data you were provided?

12 A. I myself and my team created it, then with comments, and
13 input from counsel, and instructions based off of what they
14 could have me conclude or not.

15 Q. Understood. So it involved some level of input, and
16 communication, and --

17 A. Right.

18 Q. -- working through the different drafts?

19 A. Right.

20 Q. I believe that you spent approximately 1,021 hours working
21 on this presentation; is that right?

22 A. That's -- on this engagement, yes. But not solely on this
23 presentation, no.

24 Q. Okay. And your work on this matter actually began in
25 August of 2016?

H37KLEB5

Rollins - Cross

1 A. I may have said September, but it was sometime in August or
2 September.

3 Q. Okay. Sometime between August and September of 2016?

4 A. That's correct.

5 Q. And to date, you have billed \$393,085 related to your work
6 on this case?

7 A. I believe we have incurred something around that. I
8 believe what we have billed is closer to 250.

9 Q. 250. But you have bills outstanding up to this \$393,000
10 amount?

11 A. I think there are bills that will be issued. I'm not sure
12 when they will be.

13 Q. Understood. Thank you.

14 Now, in preparing this presentation, you reviewed
15 records for several bank accounts; is that right?

16 A. That's correct.

17 Q. And one of those accounts was Intelligent VR?

18 A. That's correct.

19 Q. And you reviewed one bank account, a Bank of America
20 account, associated with Intelligent VR?

21 A. Okay.

22 Q. Is that right?

23 A. I believe so.

24 MS. MADRIGAL: Mr. Michaelson, if you could pull up
25 Government Exhibit 863-A, already in evidence. You can

H37KLEB5

Rollins - Cross

1 actually go to page 1.

2 Q. Do these represent Bank of America accounts for Intelligent
3 VR that you reviewed in relation to your analysis and
4 presentation in this case?

5 A. I believe so, yes.

6 MS. MADRIGAL: You can take down this exhibit.

7 Can you bring up Exhibit 900, Government Exhibit 900.

8 Q. Now, Government Exhibit 900 is a presentation that you
9 prepared, correct?

10 A. I believe so.

11 Q. This is the final presentation you prepared?

12 A. Yes.

13 Q. It's March 7th, 2017?

14 A. Yes.

15 Q. And there are actually two slides in this presentation that
16 relate to Intelligent VR; is that right?

17 A. That's correct.

18 Q. I can actually --

19 MS. MADRIGAL: We can scroll to 101. This is the
20 first slide. And 102 is the second slide.

21 Q. Is that your understanding of the slides related to
22 Intelligent VR that you prepared in relation to this
23 presentation?

24 A. Those two slides, yes.

25 Q. Now, slide 102, these entries are not a sampling of

H37KLEB5

Rollins - Cross

1 payments made to Intelligent VR, correct?

2 A. Can you specify -- can you repeat that?

3 Q. Sure.

4 Are these payments that you indicated on this page a
5 sampling, or are these actual -- all of the actual payments
6 that were made to Intelligent VR?

7 A. These are the payments that I was able to identify from the
8 statements as paid to Intelligent VR.

9 Q. From your review of the bank records?

10 A. From the review of the bank records, yes.

11 MS. MADRIGAL: Now, Mr. Michaelson, if you could pull
12 up slide number 1.

13 THE COURT: Can you shut down the -- when you're
14 pulling up -- thank you. Wait until it's up, and then you can
15 publish.

16 Q. Now, in your presentation, you have two entries on
17 11/24/2014 that have been highlighted. Do you see those?

18 A. I see those highlights.

19 MS. MADRIGAL: Mr. Michaelson, if you can pull up
20 slide number 2.

21 Q. Now, if we take a look at the Intelligent VR bank records
22 for November, specifically looking at November 24th, 2014, we
23 only see one entry in the amount of \$5,305.36; is that right?

24 A. I see that. That's correct.

25 Q. So, as far as the bank records are concerned, there is

H37KLEB5

Rollins - Cross

1 actually only one entry in the amount of \$5,305.36 on
2 11/24/2014?

3 A. That appears to be what's on this page.

4 MS. MADRIGAL: Mr. Michaelson, if you could pull up
5 slide 7.

6 Q. Now, slide 7 is actually a side-by-side comparison of your
7 slide 102 and the Intelligent VR bank records from Bank of
8 America, and they both relate to the November billings?

9 Do you understand?

10 A. I see that.

11 Q. So, is the first entry on your slide for 11/24/14 in the
12 amount of \$5,305.36 actually just a duplicate entry?

13 A. I think it may be. It appears to be similar to what the
14 case with the ACH records were indicated a different name, but
15 it may be the same payment.

16 Q. Okay. So it appears to be a mistake?

17 A. It appears to be, yes.

18 MS. MADRIGAL: Can you please put up slide 3,
19 Mr. Michaelson.

20 Q. And, here, the highlighted portion, which highlights two
21 transactions on December 9, 2014, recipient Intelligent VR in
22 the amount \$417, do you see that?

23 A. I see that.

24 MS. MADRIGAL: And, Mr. Michaelson, if you can pull up
25 slide 4.

H37KLEB5

Rollins - Cross

1 Q. And looking at the bank records for the same time period,
2 how many entries do you see on 12/9/2014 in the amount of \$417?

3 A. Again, I see one.

4 Q. Okay. So the bank account only shows one wire in the
5 amount of \$417 from Anthony Murgio?

6 A. That's correct.

7 MS. MADRIGAL: Now, Mr. Michaelson, if you could
8 please pull up slide 8.

9 Q. And this is another side-by-side comparison of your slide,
10 and on the right-hand side, we have the Bank of America
11 records. So, again, fair to say that the first entry of \$417
12 just appears to be a duplicate entry?

13 A. Right. Again, I think what happened is on a separate bank
14 record, you'll see it reported as Collectables Club, and on
15 this one, it's Anthony Murgio, but it appears to be the
16 duplicate of the same transaction.

17 MS. MADRIGAL: And if we can actually pull up slide
18 102.

19 Q. So, the total amount of payments to Intelligent VR here is
20 shown as \$28,112.72. Do you see that?

21 A. I see that.

22 Q. And is that number correct?

23 A. If those two are duplicates, it would be reduced by that
24 amount.

25 Q. Okay.

H37KLEB5

Rollins - Cross

1 MS. MADRIGAL: Mr. Michaelson, if you could please
2 pull up slide 5.

3 Q. Now, here on this slide, you see that we have actually
4 drawn a strike-through through the two entries that appear to
5 be duplicates. If we take this \$28,112.72 amount and reduce it
6 by the duplicative transactions, we will have to reduce it by
7 \$5,305.36, correct?

8 A. That's correct.

9 Q. And then also by \$417, correct?

10 A. That's correct.

11 Q. And if my math is correct, the amount of payments to
12 Intelligent VR is actually \$22,390.36. Does that sound like it
13 could be the correct number?

14 A. That sounds -- yes.

15 MS. MADRIGAL: And, Mr. Michaelson, if you could
16 please pull up slide number 6.

17 Q. Because of the exercise we've just gone through, this means
18 that the summary by recipient that indicates that Intelligent
19 VR received \$28,112.72 is actually incorrect; is that right?

20 A. It would be the smaller number that takes out those two
21 duplicates.

22 (Continued on next page)

H37OLEB6

Rollins - Cross

1 Q. Very good.

2 MS. MADRIGAL: No further questions. Thank you.

3 THE COURT: Thank you, Ms. Madrigal.

4 Mr. Klingeman.

5 CROSS-EXAMINATION

6 BY MR. KLINGEMAN:

7 Q. Good afternoon, Mr. Rollins.

8 A. Good afternoon.

9 Q. We met out in the hall?

10 A. Yes.

11 Q. And just to remind you, my name is Henry Klingeman and I
12 represent Pastor Gross.

13 The tracing slides that you showed us earlier today
14 are the result of you using the FIFO method.

15 A. That's correct.

16 Q. First-in, first-out?

17 A. First-in, first-out, yes.

18 Q. And that's a specific accounting technique or method?

19 A. Accounting, valuation method, yes.

20 Q. And there are others?

21 A. And there's others, yes.

22 Q. LIFO?

23 A. LIFO is one.

24 Q. Last-in, first-out?

25 A. Last-in, first-out, yes.

H37OLEB6

Rollins - Cross

1 Q. And what you described in your words as the specific
2 identification of sources of funds and corresponding
3 expenditures of funds, correct?

4 A. That's correct, yes.

5 Q. So for example, if I gave you a dollar -- a dollar bill
6 right now, and you took it from me and you went to the
7 cafeteria and you bought a yogurt for a dollar, we could say
8 that that dollar I gave you was used specifically to purchase
9 that yogurt, correct?

10 A. That sounds fair, yes.

11 Q. And what you're saying with respect to the much more
12 complicated transactions in this case, that sort of specific
13 tracing is, to use your word, "impossible"?

14 A. It's not always possible. In some circumstances it may be
15 possible.

16 Q. Sure. But you were asked by the government earlier today
17 about this particular case and these particular transactions,
18 and the word you used with the jury -- and I counted twice --
19 was "impossible".

20 A. For the broader analysis, yes.

21 Q. That you did in this case?

22 A. In this case, yes.

23 Q. Attempting to trace the more than \$150,000 in source funds,
24 right?

25 A. Correct.

H37OLEB6

Rollins - Cross

1 Q. To the various transactions that you list at the end of the
2 slide presentation.

3 A. Correct. Because there wasn't always a one-for-one
4 matching, and transaction sizes are the sources we used.

5 Q. To establish the one-for-one transaction, the one-for-one
6 correspondence that you list on at least three summary slides
7 you have to use the FIFO method.

8 A. That's the method I used, yes.

9 Q. Okay. But if you used a different method, you wouldn't be
10 able to generate that same dollar-for-dollar correspondence,
11 correct?

12 A. If I used a different method, the amounts may change.

13 Q. And the list of purchases or expenditures would change, as
14 well.

15 A. Some of them may overlap, some of them may be different.

16 For example, if I used the LIFO method, some of the
17 transactions that were captured in FIFO may still be captured
18 and some may be different.

19 Q. Some would be different?

20 A. Some may be different, yes.

21 Q. In terms of what actually happened, we're relying on an
22 accounting methodology rather than a direct tracing, correct?

23 A. Well, what we're seeing is everything that was reported in
24 the bank statement, presuming that the bank statement's report
25 correctly what happened and it's just a matter of performing

H37OLEB6

Rollins - Cross

1 the tracing analysis to identify, allocate, and attribute the
2 uses to a particular source, it's necessary to apply the
3 accounting methodology because within a bank account, all the
4 money is mixed together and commingled, and it's impossible, as
5 you've pointed out and as I've said, it's impossible to
6 directly link every single use with every single source on a
7 dollar-for-dollar basis.

8 Q. Okay. And you used the FIFO method as directed to use it
9 by the prosecutors?

10 A. That's correct.

11 Q. And in fact, the U.S. Attorney's Office has paid you, I
12 guess, nearly \$250,000 to follow the directions in this regard
13 to do this work, correct?

14 A. Again, the amount that we've been paid is partly related to
15 this aspect and partly related to other aspects of what they've
16 asked us to do.

17 Q. And you've billed them an additional \$150,000?

18 A. I'm sorry?

19 Q. I think you've said you billed them -- you're expecting to
20 get paid another \$150,000 after this?

21 A. We haven't billed -- we've billed \$250,000 to date, yes.

22 Q. But counsel asked you if the total expectation is \$390,000?

23 A. I think it may be close to that, yes.

24 Q. Obviously, you're being paid to sit here today and give
25 this testimony.

H370LEB6

Rollins - Cross

1 A. That's correct.

2 Q. You would not be here if you weren't being paid.

3 A. That's correct.

4 Q. Now, as you said, if you would use the specific
5 identification method, then this analysis would be impossible,
6 correct?

7 A. The full analysis would not be possible, that's correct.

8 Q. And the slides would look vastly different if you had
9 attempted to use the specific identification method.

10 A. Well, what I'm saying is that you can't -- you can't do the
11 tracing analysis as I've done it using a specific
12 identification because the data doesn't allow you to
13 specifically line up the uses -- the out-flows and the
14 in-flows.

15 Q. In other words, you wouldn't even be able to generate some
16 of the slides you've generated using the FIFO method.

17 A. Right. You need to apply some sort of accounting method.

18 THE COURT: Mr. Klingeman, can you pull the mic a
19 little bit closer, please?

20 MR. KLINGEMAN: Yes, your Honor, of course.

21 THE COURT: Thank you.

22 MR. KLINGEMAN: If we could open government's 900 in
23 evidence.

24 BY MR. KLINGEMAN:

25 Q. I just want to ask you a couple questions, Mr. Rollins,

H37OLEB6

Rollins - Cross

1 about various slides.

2 A. Sure.

3 Q. So let's start with number 4.

4 Mr. Rollins, number 4, as you described it earlier
5 today, is a summary chart listing 10 transactions involving the
6 depositing of funds at various financial institutions related
7 to either Hope Cathedral or HOPE Federal Credit Union, correct?

8 A. That's correct.

9 Q. And I think you told us earlier that this final version of
10 government's 900 has gone through a number of various drafts
11 and iterations?

12 A. That's correct.

13 Q. And your analysis, needless to say, has been subject to
14 review by the prosecutors.

15 A. That's correct.

16 Q. And at different times they've pointed out errors or
17 oversights that your firm has committed?

18 A. Largely, it's been to either ask for additional analysis
19 that in earlier drafts we hadn't performed yet or to -- where
20 we've asked for whether or not they have additional documents
21 that we identified would be useful, and then they've helped
22 provide that, and then they provided direction on -- as to
23 information that would be allowed to be included in the slides.

24 Q. But you all have missed things as you've been preparing
25 this chart.

H37OLEB6

Rollins - Cross

1 A. I'm sorry. Can you be more specific?

2 Q. Sure. Do you disagree with me or do you disagree with the
3 question that you've missed things?

4 A. Well, I'm asking what do you mean by -- what have we
5 missed?

6 Q. Well, to your recollection as you're sitting here now, do
7 you recall missing anything significant as you developed this
8 chart?

9 MR. NOBLE: Objection.

10 THE COURT: Sustained.

11 Q. Specifically, item number 8, or transfer number 8,
12 Mr. Rollins, is a \$50,000 wire transfer?

13 A. Yes.

14 Q. That was ultimately returned.

15 A. Yes.

16 Q. In December, 2014.

17 A. Yes.

18 THE COURT: We're looking at 900-4?

19 MR. KLINGEMAN: Yes.

20 THE COURT: Could we make it larger, please? Thank
21 you.

22 Q. Do you recall in December of last year your colleague,
23 Mr. Fitzgerald, acknowledging that your firm had missed this in
24 the analysis that your firm had prepared to date?

25 A. I don't recall that, no.

H370LEB6

Rollins - Cross

1 Q. If I showed you an email that you were on, would that help
2 refresh your recollection?

3 A. That might, yes.

4 Q. I'm going to show you what's been marked for identification
5 as defendant's TG51.

6 MR. KLINGEMAN: Your Honor, I'm showing the witness
7 what's been marked for identification as TG51.

8 Q. Just take a look at it, please.

9 A. Okay.

10 Q. Mr. Rollins, does TG51 for identification refresh your
11 recollection that in the analysis that your firm had done to
12 the date of mid December, 2016, you all had missed in your
13 analysis this transfer and subsequent reversal?

14 A. Reading it, that's what it indicates. It indicates that on
15 the bank record it didn't specifically identify HOPE FCU on the
16 record, and thus, we didn't identify it based off of looking at
17 that one bank statement alone, and it required using some
18 additional sources.

19 Q. So you have a reason for missing it, but in fact you missed
20 it.

21 A. It appears to be the case, yes.

22 Q. That was a 50,000 transfer into HOPE Federal Credit Union
23 in December, 2014 that was subsequently returned to whomever
24 sent the 50,000.

25 A. That's correct.

H37OLEB6

Rollins - Cross

1 Q. In other words, the money wasn't kept by HOPE Federal
2 Credit Union.

3 A. It was sent back, yes.

4 MR. KLINGEMAN: Let's go to page 18, if we could.

5 Q. Page 18 is a PNC Bank wire transfer record that you've
6 analyzed?

7 A. Yes.

8 Q. You understand that this is not a bank statement from PNC?

9 A. That's correct.

10 Q. It's something that would have to be requested by a
11 customer, specifically, in order to view the information that's
12 contained on the document?

13 A. It would have to be requested, yes.

14 Q. And this is a document that makes reference to the fact
15 that the wire transfer of funds from an account in West Palm
16 Beach to an account in Jackson, New Jersey passed through the
17 Bank of New York in New York City, right?

18 A. No, I think it indicates that it involved Bank of America
19 in New York.

20 Q. Sorry?

21 A. It involved Bank of America, which has a New York address.

22 Q. I'm sorry. Did I not say Bank of America?

23 A. I thought you had said Bank of New York.

24 Q. Sorry. You are absolutely right. Bank of America,
25 different institution, right?

H37OLEB6

Rollins - Cross

1 A. Yes.

2 MR. KLINGEMAN: And then likewise, page 22, if we
3 could.

4 Q. Same type of slide, Mr. Rollins?

5 A. Yes.

6 Q. In other words, a PNC Bank record for a wire transfer?

7 A. That's correct.

8 Q. It's not part of the account statement that's regularly
9 made available --

10 A. It's not typically provided --

11 THE COURT: One person needs to speak at a time, so
12 please do wait for the question.

13 Go ahead.

14 Q. In other words, it's wire transfer record that's not made
15 available as part of the account statement that's given to the
16 customer on a monthly basis.

17 A. Right. It's not typically provided, but it may be provided
18 at request.

19 Q. Upon request.

20 A. Upon request.

21 Q. The customer goes looking for it.

22 A. If the customer or somebody else goes looking for it, yes.

23 MR. KLINGEMAN: Slide 38, please.

24 Q. Slide 38 is one of three slides in the exhibit, the other
25 two being pages 77 and 98, where you list on the left side of

H370LEB6

Rollins - Cross

1 the page sources of funds, right?

2 A. That's correct.

3 Q. And those sources of funds are among the various sources
4 listed on page 4 that list of series of deposits or transfers?

5 A. That's correct.

6 Q. And on the right side of the page, the purported uses of
7 those funds, right?

8 A. By category, yes.

9 Q. And on each of pages 38, 77, and 98, the numbers at the
10 bottom of each column match exactly, right?

11 A. I believe so, yes.

12 Q. And that's based on you using the FIFO method?

13 A. That's on the basis of using the FIFO method, yes.

14 Q. And then the specific items that are supposed to be used --
15 for which the funds were used to purchase, starting with cash
16 withdrawals, meals, mortgage and loan payments, those are all
17 correlated based on your use of the FIFO method.

18 A. They're identified using the FIFO method, yes.

19 Q. Well, do you understand what I mean when I say
20 "correlated"?

21 A. So as being traceable to the -- so yes.

22 Q. Traceable?

23 A. Yes.

24 Q. To use your word?

25 A. Right.

H37OLEB6

Rollins - Cross

1 Q. If you used the LIFO method, you wouldn't necessarily have
2 that same list on the right-hand side of the page?

3 A. Not necessarily, no.

4 Q. Certainly, if you had the ability to trace directly the
5 various sources of funds to the various purchases, you either
6 couldn't do it at all because it was impossible --

7 A. Right.

8 Q. -- or it might be different if you could do it, right?

9 A. Right. If it was a bank account where you could do it, it
10 may be a different iteration, but I would expect some of these
11 would stay the same in terms of the categories.

12 Q. Some would, but some wouldn't?

13 A. Some may not.

14 Q. And you're speculating about that?

15 A. Well, in terms of some of the uses that I identified, there
16 was a large volume for those categories.

17 Q. But again, that's speculation on your part.

18 A. Given the -- no, because given the timing, some of the
19 payments that I know would have fit either in the FIFO or LIFO.

20 Q. Well, for example, if there was no money in the account,
21 that would be one way to do it without resorting to FIFO,
22 right?

23 A. If there was no money in the account?

24 Q. Yeah. Say, for example, you have an empty bank account.

25 A. Right.

H37OLEB6

Rollins - Cross

1 Q. No balance.

2 A. Right.

3 Q. If you transfer into it \$15,000.

4 A. That's correct.

5 Q. From that you purchase meals, you make a mortgage payment,
6 you pay a credit card bill. You could say, without resorting
7 to FIFO, that those funds are directly traceable based on the
8 specific identification of the funds coming in and then the
9 funds being used to pay out, right?

10 A. Absent any other information, so if there's not subsequent
11 deposits --

12 Q. Right.

13 A. -- then yes. But if there's other deposits, which there
14 were in these accounts following the initial deposit that I'm
15 analyzing, that also requires the FIFO methodology.

16 Q. Because you can't do it directly.

17 A. Because you can't do a direct correlation, yes.

18 MR. KLINGEMAN: Let's go to slide 52, please.

19 Q. This is a list of approximately 15 withdrawals?

20 A. Okay.

21 Q. Well, is it? It's your slide. Right? Doesn't it say
22 "cash withdrawal" at the very top?

23 A. It may be 15 or 16.

24 Q. I'm sorry.

25 A. Approximately 15, yes.

H37OLEB6

Rollins - Cross

1 Q. Approximately, yes. I think I said "roughly", but in any
2 event.

3 Approximately 15 or 16 withdrawals, right?

4 A. Yes.

5 Q. And in the lower left in the box labeled "Key", purportedly
6 the source of these funds are the various transactions listed
7 in the box, correct?

8 A. Yes. And the key at the bottom most key, yes.

9 Q. Lower left corner.

10 A. Yes.

11 Q. The box that says "Key"?

12 A. Yes.

13 Q. Did you testify in answer to the initial questions about
14 this that these various withdrawals went to Trevon Gross?

15 A. I did not, no.

16 Q. Do you know where they went?

17 A. Not for all of them. I think I testified that, for
18 example, for the ATM withdrawals, I didn't have enough
19 information to identify who made the withdrawal.

20 Q. Okay. And the ATM withdrawals constitute the majority of
21 these, correct?

22 A. The majority of the number of transactions, yes, but in
23 terms of dollar value, no.

24 Q. So let's talk about the substantial dollar value amounts.
25 Do you know where the specific withdrawals went?

H37OLEB6

Rollins - Cross

1 A. I provided an example for the 1355.

2 Q. Okay.

3 A. And that was the withdrawal that had the withdrawal ticket
4 with Trevon Gross' name on it.

5 Q. That's the very next slide --

6 A. That's the --

7 Q. -- number 53.

8 A. I believe it starts --

9 Q. So the one example that you cite to the jury is a
10 withdrawal that appears to be in the name of Trevon Gross.

11 A. That's correct.

12 Q. What about the \$14,000?

13 A. The \$14,000, based on my analysis, appeared to be a
14 withdrawal that was then used to make a certified check.

15 Q. And who made the withdrawal?

16 A. I believe it was a person by the name of Loretta Larkins.

17 Q. Not Trevon Gross.

18 A. Not Trevon Gross.

19 Q. And you mentioned that it was used to fund a certified
20 check or a cashier's check?

21 A. As I recall, yes.

22 Q. To whom was that check payable?

23 A. I believe it was Joel Osteen Ministries, and there's some
24 additional information beyond that, but I don't recall exactly
25 what the words were.

H370LEB6

Rollins - Cross

1 Q. Do you know that Joel Osteen is some kind of famous
2 religious figure?

3 A. I'm aware of it, yes.

4 MR. NOBLE: Objection.

5 THE COURT: Overruled.

6 THE WITNESS: I'm aware of him, yes.

7 Q. And then, how about the \$3,500 withdrawal? Do you know who
8 made that withdrawal?

9 A. I don't recall sitting here today.

10 Q. But you looked into it?

11 A. I looked into it, yes.

12 Q. Do you know about the \$750 withdrawal?

13 A. I don't recall that, as well.

14 Q. I'm going to show you, Mr. Rollins, what I've marked for
15 identification as Defendant's TG51.

16 MR. KLINGEMAN: Your Honor, with apologies. I'm going
17 to mark this one TG52.

18 THE COURT: Okay.

19 MR. KLINGEMAN: Your Honor, I'm showing the witness
20 TG52 for identification, and I'm going direct his attention to
21 the third and fourth pages.

22 THE WITNESS: Okay.

23 BY MR. KLINGEMAN:

24 Q. Does that document, Mr. Rollins, refresh your recollection
25 as to the disposition of the \$3,500?

H37OLEB6

Rollins - Cross

1 A. Yes, it does.

2 MR. NOBLE: Judge, just a quick objection to the
3 witness just reading from the document.

4 THE COURT: Yes. Sustained.

5 MR. KLINGEMAN: You can lay that aside, Mr. Rollins.
6 Thank you.

7 Q. Does that refresh your recollection as to who made the
8 withdrawal of the \$3,500?

9 A. Yes.

10 Q. And who was that?

11 A. It was somebody by the name of Julie -- actually, I believe
12 it was a cashier check to Julie Lipari, but --

13 Q. Lipari?

14 A. Lipari, Lipari.

15 Q. Lipari?

16 A. L-i-p-a-r-i.

17 Q. You say Lipari, I say Lipari, but not Trevon Gross?

18 A. Not Trevon Gross.

19 Q. Does TG52 refresh your recollection as to the disposition
20 of the last withdrawal for \$750?

21 A. I would have to look again, but --

22 Q. Please do.

23 A. Yes, it does.

24 Q. And who would that be?

25 A. That again was Loretta Larkins.

H370LEB6

Rollins - Cross

1 Q. Thank you.

2 MR. KLINGEMAN: Finally, if we could just go to slide
3 67.

4 THE COURT: Of government 900?

5 MR. KLINGEMAN: Yes, please.

6 BY MR. KLINGEMAN:

7 Q. This slide corresponds to what you refer to as transfer
8 number 7, Mr. Rollins, correct?

9 A. That's correct.

10 Q. And there are transfers prior to at 5 and 6, as well, about
11 which you testified?

12 A. That's correct.

13 Q. And with respect to each of the transfers, 5, 6, and 7 that
14 came into HOPE FCU, it was your testimony that those funds
15 were, in turn, transferred to the Hope Cathedral Church,
16 correct?

17 A. What I had said is that the funds that came in on
18 November 24th, you see 7A, following that deposit, I saw a
19 transfer in the same amount to Trevon Gross' account, which was
20 reversed, and then a transfer in the same amount to Hope
21 Cathedral's account.

22 Q. So first the money went to Trevon Gross' personal account.

23 A. That appears the way it was depicted on the statement.

24 Q. And then that transfer to Trevon Gross' personal account
25 was reversed.

H37OLEB6

Rollins - Cross

1 A. That appears to be the case, yes.

2 Q. And in other words, the money was sent out of his personal
3 account.

4 A. Back to the Collectables Club account.

5 Q. Back to where it came from.

6 A. Right.

7 Q. And then subsequently, that same amount was sent to Hope
8 Cathedral?

9 A. And then the same amount of money was sent to Hope
10 Cathedral, yes.

11 Q. And in fact, if we could go to slide 4 of government's 900
12 one more time, the first seven transfers ultimately went to
13 Hope Cathedral, correct?

14 A. That's correct. Two different accounts, both of which were
15 held in Hope Cathedral's name.

16 Q. At the church.

17 A. One was at the PNC Bank and one was at HOPE FCU.

18 Q. But they're accounts that belonged to the church.

19 A. That were held in the name of Hope Cathedral, yes.

20 Q. Not Trevon Gross.

21 A. It's held in the name of Hope Cathedral.

22 Q. Now, I take it from what you said this morning, the only
23 source of information for your chart was supplied to you by the
24 government.

25 A. All of the documents that I reviewed were ultimately

H370LEB6

Rollins - Redirect

1 provided by the government, yes.

2 Q. By the prosecutors.

3 A. Right.

4 Q. And you spoke to them on a number of occasions?

5 A. Yes.

6 Q. Many occasions?

7 A. Yes.

8 Q. And communicated with them by email?

9 A. Yes.

10 Q. On many occasions?

11 A. On several occasions, yes.

12 Q. Did you also communicate with any government agents?

13 A. I believe so, yes.

14 Q. But you never spoke to anyone at the Hope Cathedral, right?

15 A. No, I did not.

16 Q. Never spoke to anyone at HOPE Federal Credit Union, right?

17 A. No, I did not.

18 Q. Never spoke to Trevon Gross?

19 A. I did not, no.

20 MR. KLINGEMAN: No further questions.

21 THE COURT: Thank you.

22 Mr. Noble.

23 MR. NOBLE: Thank you, Judge.

24 REDIRECT EXAMINATION

25 BY MR. NOBLE:

H370LEB6

Rollins - Redirect

1 Q. Mr. Rollins, on cross examination, Mr. Klingeman asked you
2 some questions about what he called the specific identification
3 method. Do you remember that?

4 A. Yes.

5 Q. Can you just explain to the jury how that method is
6 applied?

7 A. Very high level, it means that, similar to the analogy he
8 provided, if I give you a physical dollar bill, and then you
9 use that physical dollar bill to buy a yogurt, you could say
10 that that was a specific identification of a use from the money
11 that I gave you.

12 And in a bank account, if there's no other funds in
13 the account and there's no deposits between the use of the
14 funds and the source of the funds, you could use a specific
15 identification method to apply the tracing on those uses.

16 Q. So if a bank account didn't have any money in it, \$10,000
17 comes in, then there are \$10,000 of expenses, you could
18 attribute those expenses directly to that \$10,000.

19 A. That's correct.

20 Q. Match them up one for one?

21 A. That's correct, assuming there's no --

22 Q. Intervening?

23 A. -- intervening deposits, as well.

24 Q. Why didn't you apply that method here, aside from the fact
25 that the government said to use FIFO?

H370LEB6

Rollins - Recross

1 A. Right. Also, because within the bank records there were a
2 number of accounts that had beginning balances, as well as the
3 intervening deposits into the account following the
4 transactions that I was asked to review and before other uses
5 of the funds.

6 Q. Have you used the FIFO tracing analysis in any other
7 assignment that you've done for other clients?

8 A. I have, yes.

9 MR. KLINGEMAN: Objection.

10 THE COURT: Sustained.

11 MR. NOBLE: No further questions.

12 THE COURT: Ms. Madrigal.

13 MS. MADRIGAL: Nothing further, your Honor.

14 THE COURT: Mr. Klingeman.

15 RECROSS EXAMINATION

16 BY MR. KLINGEMAN:

17 Q. Mr. Rollins, you used the FIFO method because the
18 government told you to.

19 A. That's correct.

20 MR. KLINGEMAN: Nothing further.

21 MR. NOBLE: Nothing further.

22 THE COURT: Thank you.

23 Mr. Rollins you're excused. You may step down.

24 (Witness excused)

25 THE COURT: Ms. Choi.

H37OLEB6

Rollins - Recross

1 MS. CHOI: Your Honor, I don't know if this is the
2 time --

3 THE COURT: It depends what you say.

4 MS. CHOI: In light of the previous representations
5 that we had with regard to the government's rebuttal case, at
6 this time the government would rest.

7 THE COURT: All right, thank you.

8 I'll see counsel at sidebar briefly.

9 (Continued on next page)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

H37OLEB6

Rollins - Recross

1 (At sidebar)

2 THE COURT: I thought that was what we had
3 anticipated.

4 MS. CHOI: Yes. I didn't know how you wanted to deal
5 with this. Sometimes they do it before.

6 MR. KLINGEMAN: Your Honor, given the close of the
7 government's case, the defendant, Trevon Gross, hereby moves
8 for judgment of acquittal pursuant to Rule 29. And we'll take
9 direction from the Court as to the time for argument and
10 briefing and anything else the Court would need before making a
11 ruling. But we want to preserve our right to make the motion,
12 and having done so, I would be prepared to move ahead with the
13 defendant's case.

14 THE COURT: All right. I will take that as a
15 placeholder motion and preserve with opportunity later for
16 argument.

17 Mr. Creizman.

18 MR. CREIZMAN: Yes. I also will do a placeholder
19 motion at this time, Rule 29, on all of the counts charged
20 against Yuri Lebedev. But I might particularly note, though,
21 with respect to the bank wire fraud and the conspiracy, that I
22 don't believe that the government has presented sufficient
23 evidence that --

24 THE COURT: Well, can I pause you? I want to give you
25 both an opportunity to state your grounds for Rule 29, but I'm

H370LEB6

Rollins - Recross

1 comfortable if this is just a placeholder, and then once we let
2 the jury go home for the day, you can put what you would say
3 here now on the record.

4 MR. CREIZMAN: Okay.

5 THE COURT: Everybody agree with that process?

6 MS. CHOI: That's fine. And we would note as a
7 placeholder that we object.

8 THE COURT: That's fine.

9 Mr. Creizman and Ms. Madrigal, you'll put in your
10 evidence and take it from there?

11 MR. CREIZMAN: Yes.

12 MS. MADRIGAL: We won't be publishing, your Honor.

13 THE COURT: You're not publishing?

14 MR. CREIZMAN: We're not. We're just going to say
15 that -- I don't know exactly what the right language that you
16 guys used. I want to be consistent. But pursuant to a
17 stipulation with the government --

18 MS. MADRIGAL: We have a stipulation?

19 MR. CREIZMAN: -- we are introducing into evidence the
20 following exhibits: Defendant's Exhibit -- yeah.

21 MS. CHOI: The one issue that I would just raise is,
22 obviously, we believe that there are -- if they are being
23 offered for a non-hearsay purpose, we just want to have clarity
24 about that with regard to the document such that no point in
25 the future for the defendant argue that with regard to the

H370LEB6

Rollins - Recross

1 truth, it only goes to what Yuri Lebedev knew or whatever the
2 exception might be.

3 MR. CREIZMAN: Right, yes.

4 MS. MADRIGAL: Absolutely.

5 MR. CREIZMAN: It's either non-hearsay or under an
6 exception.

7 MS. CHOI: Right. I just don't know if it's better to
8 articulate those grounds expressly, as we did for the other
9 exhibits, or if we just want to make the representation we
10 won't argue that they're for the truth, but rather going to the
11 state of mind of the defendant or --

12 MS. MADRIGAL: I mean, it depends on the exhibit.

13 MS. CHOI: Right.

14 THE COURT: It seems like it depends on the exhibit.
15 Do you want a limiting instruction if it's coming in for
16 something other than the truth?

17 MR. CREIZMAN: Yes. Can I just take a brief moment to
18 just check so I can figure out which exhibit is which, and then
19 I can -- I mean --

20 MS. MADRIGAL: Should we move on to Mr. Gross' case
21 and --

22 MR. CREIZMAN: I mean, it shouldn't be that hard. It
23 is for -- it can't be for a hearsay purpose. The only question
24 is --

25 MS. CHOI: What's the exception is?

H37OLEB6

Rollins - Recross

1 MR. CREIZMAN: -- what the exception is. So I can
2 collect my -- I'm really good with the rules of evidence, so
3 you give me two minutes, I'll get this thing done. I mean, it
4 won't be hard.

5 THE COURT: Let's see how good you are.

6 MS. MADRIGAL: His one rule of evidence is it's for
7 non-hearsay purposes.

8 THE COURT: Can we just do them as they come in?

9 MS. CHOI: You want to publish them for just us, and
10 then you would offer your non-hearsay portion -- or your
11 non-hearsay reason, and then the Judge would instruct as to
12 certain exhibits.

13 MS. MADRIGAL: Before the jury?

14 MS. CHOI: That's what it's going to have to be.

15 MR. NOBLE: You can either publish them after they
16 come in, and then the Judge can give a limiting instruction, or
17 we can go one by one, and she can give limiting instructions so
18 at least we have the limiting instruction on the record to each
19 exhibit.

20 MR. CREIZMAN: I have an idea. This should
21 actually -- under an agreement with the government, exhibits
22 whatever through whatever will be admitted for a non-hearsay
23 reason -- no. Okay.

24 MS. CHOI: So, your Honor --

25 THE COURT: Try your case. Let's go.

H37OLEB6

Rollins - Recross

1 Mr. Creizman, I'll give the jury a short break while
2 you set up.

3 MR. CREIZMAN: Thank you.

H37OLEB6

Rollins - Recross

1 MR. KLINGEMAN: Your Honor, may I be excused for a
2 moment.

3 THE COURT: Yes. I'm going to step down for two
4 minutes because that's all Mr. Creizman says he needs, so let's
5 do that. We'll do ten minutes now. Thank you.

6 (Recess)

7 THE COURT: Where are we, folks? Mr. Creizman?

8 MR. CREIZMAN: Yes.

9 THE COURT: Are you ready?

10 MR. CREIZMAN: We are done.

11 THE COURT: What's the plan?

12 MR. CREIZMAN: I'm going to --

13 THE COURT: Microphone, please.

14 MR. CREIZMAN: I think I should go up -- I actually
15 could do this from here. I can say the defense is -- I'll
16 stand up to the podium -- under a stipulation with the
17 government, the defense is introducing the following exhibits
18 not for the truth -- I'm going to write it down -- the exhibits
19 not for the truth of the matter asserted, but -- these
20 communications not for the truth of the matter asserted but for
21 their affect on the recipients. Okay?

22 And then the other one would be, these exhibits are
23 offered not for their truth, but for the state of mind of
24 Mr. Lebedev, who is the one communicating.

25 And then the last one is a business record.

H370LEB6

Rollins - Recross

1 MS. CHOI: Your Honor, we agree with that approach,
2 but we would just suggest that your Honor instruct the jury as
3 to how they should be used. But we do agree that it's three
4 categories; business records, affect on the recipient, and
5 state of mind of the defendant.

6 MR. CREIZMAN: I prefer that, too.

7 THE COURT: But I don't know which are which. The
8 first set of documents consist of what numbers?

9 MR. CREIZMAN: The first set of documents are Defense
10 Exhibits 21, 17, 18.

11 THE COURT: Wait. I'm sorry. 21, 17, 18?

12 MR. CREIZMAN: No. They were just out of order,
13 that's all. 17, 18, 19, 20, 21, 22, 23, 27, 28, and 26.
14 Sorry. So it would be --

15 THE COURT: So 17 through 23 and 26 through 28.

16 MR. CREIZMAN: Correct.

17 THE COURT: And that's category 1.

18 Tell me what the proposed limiting instruction is.

19 MR. CREIZMAN: Effect on the listener. State of mind
20 of the listener.

21 THE COURT: So they're not being offered for the truth
22 but their affect on the state of mind of the --

23 MR. CREIZMAN: Recipient.

24 THE COURT: -- recipient.

25 MR. CREIZMAN: Specific there, they're either email

H37OLEB6

Rollins - Recross

1 communications or chats that are -- okay.

2 THE COURT: Category 2?

3 MR. CREIZMAN: And then category 2 is Exhibits 15 and
4 16, which are emails of Yuri Lebedev to show the state of mind
5 of Yuri Lebedev, offered for the state of mind of Yuri Lebedev.

6 THE COURT: So not being offered for the truth but for
7 the state of mind of Mr. Lebedev.

8 MR. CREIZMAN: Correct.

9 And Defendant's Exhibit 25 is a business order.

10 THE COURT: Being offered for the truth.

11 MS. CHOI: Correct, so I don't believe there needs to
12 be a limiting instruction.

13 THE COURT: Okay. And what exhibit number is the
14 third category?

15 MR. CREIZMAN: 25. They're all DX. Our exhibits are
16 prefixed DX.

17 THE COURT: All right.

18 MS. CHOI: Your Honor, I think that's fine. I just
19 think the one question we have, just a logistically matter, I
20 believe this will go pretty quickly and then we'll go into
21 Mr. Gross' defense. As we discussed we had some issues with
22 regard to the exhibits that have been proffered by Mr. Gross.
23 I don't think -- I mean, my understanding is that the character
24 witnesses are going to be first.

25 THE COURT: Right.

H37OLEB6

Rollins - Recross

1 MS. CHOI: It doesn't seem as though any of those are
2 going to be offered through them, so hopefully we don't think
3 we have to --

4 THE COURT: Are there exhibits anticipated coming in
5 through the character witnesses?

6 MR. KLINGEMAN: No.

7 THE COURT: How many character witnesses?

8 MR. KLINGEMAN: Three, your Honor, and the direct
9 examination of each will be about five minutes.

10 THE COURT: Okay. And then what's anticipated?

11 MR. KLINGEMAN: Pastor Gross.

12 THE COURT: And estimation as to length of the direct
13 examination of Mr. Gross?

14 MS. SANTILLO: Approximately a couple hours.

15 THE COURT: Okay. And in the first, let's say, two
16 hours, are documents anticipated to come in that the government
17 has not yet had a chance to review?

18 MS. SANTILLO: No, I don't think for the first 30 to
19 40 minutes there will be documents.

20 THE COURT: And after that, what documents are coming
21 in?

22 MS. SANTILLO: Your Honor, I have a set that I can
23 review.

24 THE COURT: And you've given it to them and
25 identified -- because what we're trying to do here,

H37OLEB6

Rollins - Recross

1 Ms. Santillo, maybe it's not clear, is since you were late, I
2 gather, in turning these over, and they haven't had a chance to
3 review them in light of that lateness, is to see how we can use
4 our time efficiently today without needing to -- they have an
5 opportunity to review and I can resolve any objections this
6 evening after the jury goes home rather than while they're
7 sitting here. So is there a way to put off any materials until
8 after 4:30 today?

9 MS. SANTILLO: Yes, your Honor, we can do that.

10 THE COURT: Terrific.

11 Does that take care of it?

12 MS. CHOI: Yes, your Honor, for now.

13 THE COURT: Anything else?

14 MR. KLINGEMAN: Is your Honor planning on any
15 additional breaks before 4:30?

16 THE COURT: No.

17 MR. KLINGEMAN: Thank you.

18 THE COURT: I mean, if there's a request, let me know.
19 But it's an hour and a half, and I think in light of different
20 witnesses and the like, the jury can handle an hour and a half.
21 But if there's a need, let me know. All right?

22 Let's get the jury.

23 (Continued on next page)

H370LEB6

Rollins - Recross

1 (Jury present)

2 THE COURT: Thank you, members of the jury.

3 Scheduling wise, just recall we will end at 4:30 today.

4 The government has rested.

5 Mr. Creizman, on behalf of Mr. Lebedev.

6 MR. CREIZMAN: Thank you, your Honor. On behalf of
7 Yuri Lebedev, under a stipulation with the government, the
8 defense moves to admit three groups of evidence. The first
9 group are emails and chat communications marked DX17 through
10 DX23, and DX26 through DX28.

11 THE COURT: All right, thank you. The requested
12 limiting instruction with respect to those documents, correct?

13 MR. CREIZMAN: Yes, we'd request a limiting
14 instruction.

15 THE COURT: With respect to this first group of
16 defense exhibits, members of the jury, that's DX17 through 23
17 and DX26 through 28, I do instruct you that they are not being
18 offered for the truth but for their affect on the state of mind
19 of the recipient.

20 Second category of exhibits?

21 MR. CREIZMAN: Yes, your Honor. And these are emails
22 of Yuri Lebedev, and they're being also offered for a limited
23 purpose. These are Exhibits DX15 and DX16.

24 THE COURT: Thank you.

25 Members of the jury, I instruct you that these two

H37OLEB6

Rollins - Recross

1 exhibits, DX15 and DX16, are not being offered for the truth
2 but for the state of mind of Mr. Lebedev.

3 MR. CREIZMAN: And then the third category is offered
4 as a business record. It's DX25.

5 THE COURT: All right. And without objection, the
6 aforestated exhibits -- Ms. Choi?

7 MS. CHOI: No objection, your Honor.

8 MR. KLINGEMAN: No objection.

9 THE COURT: Thank you. All of the three categories of
10 exhibits, including the last Exhibit 25, is admitted. Thank
11 you.

12 (Defendant's Exhibits DX17 through 23 and DX26 through
13 28, DX15 and DX16, and DX25 received in evidence)

14 MR. CREIZMAN: Thank you, your Honor. And with that,
15 defense for Mr. Lebedev rests their case.

16 THE COURT: Thank you.

17 Mr. Klingeman.

18 MR. KLINGEMAN: Thank you, your Honor. We'll begin
19 the case in the defense of Pastor Gross with a trio of
20 character witnesses pursuant to Rule 404, and at this time I'd
21 like to call to the stand Danelle Horvath.

22 THE COURT: Ms. Horvath may come forward.

23 DANELLE HORVATH,

24 called as a witness by the Defendant Gross,

25 having been duly sworn, testified as follows:

H370LEB6

Horvath - Direct

1 DIRECT EXAMINATION

2 BY MR. KLINGEMAN:

3 Q. Good afternoon, Ms. Horvath.

4 A. Good afternoon.

5 Q. Welcome to court. Where do you live?

6 A. I live in Jackson, New Jersey.

7 Q. With whom do you live?

8 A. I live with my daughter.

9 Q. What do you do for work?

10 A. I work in the behavioral health field. I work in a group
11 home with the developmentally disabled adults.

12 Q. How do you know Pastor Gross?

13 A. I know Pastor Gross since I've been coming to Hope
14 Cathedral in December of 2013.

15 Q. So would you say you've known him approximately three
16 years?

17 A. Yes, a little over three years.

18 Q. In that three-year period, how often would you say you see
19 him?

20 A. I would say I see him every Sunday, I also see him when we
21 have church community events or we do outreach, and when he
22 hosts bible study, I attend that, as well.

23 Q. On the occasions when you're with him, do you speak to him?

24 A. Yes.

25 Q. So do you feel like you've gotten to know him well enough

H370LEB6

Horvath - Direct

1 over the last three plus years to form an opinion about his
2 character?

3 A. Yes.

4 Q. So let me ask you specifically. What is your opinion of
5 Pastor Gross' character for honesty and truthfulness?

6 A. I would have to say that Pastor Gross is one of the honest
7 people -- most honest people I've ever met, a man of high
8 integrity, a man of his word, and a true man of God.

9 Q. And similarly, what is your opinion for his character for
10 law-abidedness?

11 A. I would say that he, as far as I know, plays by the rules.
12 And if anyone tries to step out of the line of the rules, he
13 gently reminds them of what the rules are. I've never, you
14 know, seen him break a law. He's just -- he's just a rule
15 follower.

16 MR. SHIN: Objection, your Honor.

17 (Continued on next page)

18
19
20
21
22
23
24
25

H37KLEB7

Horvath - Direct

1 THE COURT: Overruled.

2 BY MR. KLINGEMAN:

3 Q. Finally, Ms. Horvath, what would be your opinion, or what
4 is your opinion of his character for generosity?

5 A. I'd have to say that Pastor Gross is a man who is generous
6 beyond measure. He is humble, he is giving. He never wants to
7 take credit for anything he's done. He just gives selflessly
8 of himself to his church, to his community, to his family, to
9 his friends.

10 Q. Now, speaking of his family and his friends, in the three
11 and a half years you've been, of course, living in Jackson and
12 worshiping at Hope Cathedral, have you gotten to know the
13 members of that community?

14 A. Yes.

15 Q. Have you gotten to know the members of that community well
16 enough to form an understanding of Pastor Gross' reputation in
17 that community?

18 A. Yes.

19 Q. What, for the members of the jury, is Pastor Gross'
20 reputation for truthfulness and honesty?

21 A. I would say Pastor Gross has a reputation as very truthful,
22 very honest, very generous, very giving, loving. A man of
23 integrity, that's how everyone knows him.

24 MR. KLINGEMAN: Thank you very much. I have no
25 further questions.

H37KLEB7

Horvath - Cross

1 THE COURT: Thank you. Mr. Shin?

2 CROSS-EXAMINATION

3 BY MR. SHIN:

4 Q. Good afternoon, Ms. Horvath.

5 A. Hi.

6 Q. So you testified that you've known Mr. Gross for about
7 three and a half years?

8 A. Yes.

9 Q. Is it fair to say that you care about him?

10 A. Yes.

11 Q. You're loyal to him?

12 A. Yes.

13 Q. And you don't want anything bad to happen to him?

14 A. No.

15 Q. And you don't want him to be convicted of a crime, right?

16 A. Not if he's innocent, no.

17 Q. Ms. Horvath, would you agree that people running a bank
18 should operate the bank in the best interests of its customers?

19 MR. KLINGEMAN: Objection.

20 THE COURT: Sustained.

21 Q. Ms. Horvath, would you agree that if you were contacted by
22 a federal government agency, you shouldn't lie to the
23 government?

24 MR. KLINGEMAN: Objection. I'd like to be heard on
25 this, if necessary.

H37KLEB7

Horvath - Cross

1 THE COURT: Sustained.

2 MR. SHIN: I'll move on, your Honor.

3 BY MR. SHIN:

4 Q. Now, Ms. Horvath, you didn't serve on the board of HOPE
5 Federal Credit Union between the summer of 2014 and late 2015,
6 did you?

7 A. No.

8 Q. And you weren't involved in conversations between Trevon
9 Gross and a federal regulator that supervises HOPE Federal
10 Credit Union?

11 MR. KLINGEMAN: Objection.

12 THE COURT: Overruled.

13 You need to be heard?

14 MR. KLINGEMAN: Yes, your Honor.

15 (Continued on next page)

16

17

18

19

20

21

22

23

24

25

H37KLEB7

Horvath - Cross

1 (At the sidebar)

2 THE COURT: I'll tell you the reason I allowed it, and
3 then I'll hear your case. She testified, over the government's
4 objection, that she has never seen him break any law, and so I
5 understand the immediate question to be about her awareness of
6 his activity with respect to the crimes charged since she
7 testified specifically that -- the reason I allowed it is
8 because she said she has not seen him, which went to character
9 for law-abidingness, which was an unobjected to question, so
10 that's why I'm allowing this one. I sustained the earlier
11 objections to the extent they don't go to character for
12 truthfulness and the like and weren't opened by direct.

13 MR. KLINGEMAN: Okay. Let me just say, I have one
14 general objection, depending on how much further the government
15 goes. The Second Circuit prohibits guilt-assuming questions,
16 and to the extent that the government wants to suggest that
17 this witness' opinion or knowledge of the defendant's
18 reputation, either of which may be uninformed by her lack of
19 knowledge of what the government perceives to be his guilt,
20 should be forbidden.

21 To the extent that the Court has determined that the
22 witness opened the door to questions about whether she's
23 observed Mr. Gross commit any crimes, I certainly would object
24 to anything else the government might ask unless and until it
25 establishes a foundation that she's, in fact, witnessed him

H37KLEB7

Horvath - Cross

1 commit crimes, because, clearly, she has no knowledge about the
2 matters in the case. And I carefully prepared the witnesses by
3 determining whether they had any knowledge of the case, and,
4 therefore, there's no foundation for asking these questions
5 other than to get at the guilt-assuming hypothetical that the
6 circuit forbids.

7 MR. SHIN: Your Honor, may I?

8 So, in addition to the opening of the door that your
9 Honor mentioned, the questions I have asked, none of them have
10 assumed guilt. I asked if she's served as a board member on
11 HOPE Federal Credit Union during the relevant time period, so I
12 have a series of questions that are standard questions to
13 elicit the fact that she has no knowledge of the facts of this
14 case. And so that the reputation and opinion testimony are not
15 based on any knowledge of what happened in the facts of the
16 case. It's a pretty standard line of questioning for character
17 witnesses, your Honor.

18 THE COURT: Yes, I won't allow guilt-assumption into
19 the questions. I will allow appropriate cross in response to
20 the direct testimony that would allow the jury to draw -- to
21 make determinations as to the basis for awareness of the direct
22 testimony as provided. Again, she said I never saw him break
23 any laws, and it's appropriate for the government to cross as
24 to her foundation of her knowledge without that question
25 embedding in it any -- it can be factually related to the case,

H37KLEB7

Horvath - Cross

1 but it may not embed in it guilt assumption.

2 MR. KLINGEMAN: Thank you.

3 THE COURT: Thank you.

4 MR. SHIN: Thank you, Judge.

5 (Continued on next page)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

H37KLEB7

Horvath - Cross

1 (In open court)

2 THE COURT: Mr. Shin, you want to repeat the prior
3 question?

4 MR. SHIN: Yes, your Honor.

5 THE COURT: Thank you.

6 BY MR. SHIN:

7 Q. So, Ms. Horvath, you didn't serve on the board of HOPE
8 Federal Credit Union between the summer of 2014 and late 2015?

9 A. No.

10 Q. And you weren't involved in conversations between Trevon
11 Gross and the federal regulator that supervises HOPE Federal
12 Credit Union?

13 A. No.

14 Q. And you weren't involved in discussions with Trevon Gross
15 and others involving the board membership of HOPE Federal
16 Credit Union, were you?

17 A. No.

18 Q. And you weren't involved in discussions with Mr. Gross and
19 others about the processing of ACH transactions by HOPE Federal
20 Credit Union, were you?

21 A. No.

22 Q. Finally, Ms. Horvath, you weren't present at a meeting on
23 November 22nd, 2014, involving Mr. Gross, Yuri Lebedev, and
24 others, correct?

25 A. No.

H37KLEB7

Floyd - Direct

1 MR. SHIN: No further questions, your Honor.

2 THE COURT: Thank you.

3 Mr. Klingeman?

4 MR. KLINGEMAN: Nothing. Thank you, Ms. Horvath.

5 THE COURT: Thank you, Ms. Horvath. You're excused.

6 You may step down.

7 (Witness excused)

8 MR. KLINGEMAN: The defense calls Barbara Floyd.

9 THE COURT: Floyd? Did you say Floyd, Mr. Klingeman?

10 MR. KLINGEMAN: Yes.

11 THE COURT: Ms. Floyd may come forward.

12 BARBARA FLOYD,

13 called as a witness by the Defendant Gross,

14 having been duly sworn, testified as follows:

15 THE COURT: Once you're seated, please pull up to the
16 microphone, and state and spell your name for the record.

17 THE WITNESS: My name is Barbara Floyd.

18 B-a-r-b-a-r-a, F-l-o-y-d.

19 DIRECT EXAMINATION

20 BY MR. KLINGEMAN:

21 Q. Good afternoon, Ms. Floyd.

22 A. Good afternoon.

23 Q. Where do you live?

24 A. 3201 Pepperbush Court, Toms River, New Jersey.

25 Q. With whom do you live?

H37KLEB7

Floyd - Direct

1 A. With my husband.

2 Q. What do you do for work?

3 A. I am a high school math teacher predominantly and a
4 part-time giraffe feeder.

5 Q. How do you know Pastor Trevon Gross?

6 A. I've been a member of Hope Cathedral for almost nine years.

7 Q. And I take it during that nine-year period, you've known
8 Pastor Gross as the head of the church?

9 A. I have.

10 Q. And over that nine-year period, on average, how often do
11 you think you have seen him?

12 A. I'm sorry, how often have I seen him over --

13 Q. Over that nine-year period. Is this a weekly, or a
14 monthly, or --

15 A. At least weekly, sometimes more than that.

16 Q. On the times that you've been in his presence, have you
17 spoken to him, interacted with him, spent time with him?

18 A. Much, yes.

19 Q. Based on that nine-year relationship, would you say you
20 know him well enough to form an opinion as to his character?

21 A. Absolutely, yes.

22 Q. Could you tell the members of the jury what your opinion of
23 Pastor Gross' character for truthfulness and honesty is?

24 A. For both of those things, I would call him the epitome of
25 excellence, above reproach.

H37KLEB7

Floyd - Direct

1 Q. I'm sorry?

2 A. Above reproach.

3 Q. And as for his character for law-abidingness, how would you
4 describe him?

5 A. The same way. Complete excellence. 100 percent abides by
6 the law.

7 Q. And, finally, as for his character for generosity, how
8 would you describe Pastor Gross?

9 A. Perhaps one of the most generous people I've ever known.

10 Q. Now, at the Hope Cathedral, you participate in worship
11 every week?

12 A. I do worship there every week.

13 Q. What other activities have you participated in over the
14 last nine years?

15 A. I ran the summer camp for three summers, from 2010, '11,
16 and '12, which was under the church. I am part of various
17 ministries at the church.

18 Q. Are you familiar with something called HOPE Federal Credit
19 Union?

20 A. I am.

21 Q. Did you participate in any way in the administration of
22 HOPE Federal Credit Union?

23 A. I worked for the church, for Hope Cathedral, summer of
24 2015. While I was there working for the church, I did
25 occasionally help Charles Blue, who was running the credit

H37KLEB7

Floyd - Cross

1 union at the time. I ordered some pens for the people who
2 filled out applications.

3 Q. Did you do any more substantive work than that?

4 A. I really did not, no.

5 Q. During this nine-year period, have you gotten to know the
6 other members of the Hope Cathedral community?

7 A. Yes, very well.

8 Q. Do you think you've gotten to know that community well
9 enough to form an opinion as to Pastor Gross' reputation in
10 that community?

11 A. Yes.

12 Q. Could you tell the members of the jury his reputation in
13 that community for truthfulness and honesty?

14 A. The same. He has a reputation for excellence. We all feel
15 the same, I am confident in saying.

16 MR. KLINGEMAN: Thank you very much. No further
17 questions.

18 THE COURT: Thank you.

19 Mr. Shin?

20 CROSS-EXAMINATION

21 BY MR. SHIN:

22 Q. Good afternoon, Ms. Floyd.

23 A. Good afternoon.

24 Q. So you've known Mr. Gross for over nine years; is that
25 right?

H37KLEB7

Floyd - Cross

1 A. Just about nine years.

2 Q. Is it fair to say that you care a great deal about
3 Mr. Gross?

4 A. Absolutely.

5 Q. And you're very loyal to him?

6 A. Absolutely.

7 Q. And you certainly wouldn't want anything bad to happen to
8 him?

9 A. I certainly would not.

10 Q. And you wouldn't want to see him be convicted of a crime,
11 would you?

12 A. Certainly not.

13 Q. Now, Ms. Floyd, you testified on questioning by
14 Mr. Klingeman that you had some involvement with HOPE Federal
15 Credit Union in 2015?

16 A. Yes, sir.

17 Q. Now, you didn't serve on the board of the HOPE Federal
18 Credit Union at any time, did you?

19 A. No. I did a few memberships. Like I said, I ordered pens,
20 some sleeves. I set up a table with balloons.

21 Q. And you weren't present for any conversations between
22 Mr. Gross and any federal regulators of the credit union?

23 A. No.

24 Q. You weren't present during any discussions about processing
25 ACH transactions for the credit union?

H37KLEB7

Floyd - Cross

1 A. Not that I recall.

2 Q. You weren't present at a November 22nd, 2014 -- excuse me,
3 November 22nd, 2014 meeting involving Mr. Gross, Yuri Lebedev,
4 and other individuals?

5 A. I was not part of -- I wasn't even working for the church
6 then. The only time I was there working was that summer of
7 2015, June, July, and August. So, no, in 2014, I was not
8 around at all.

9 MR. SHIN: No further questions, your Honor.

10 THE COURT: All right. Thank you.

11 MR. KLINGEMAN: Thank you, your Honor.

12 THE COURT: Anything further?

13 MR. KLINGEMAN: Thank you, Ms. Floyd.

14 THE COURT: All right. Thank you, Ms. Floyd. You may
15 step down.

16 MR. KLINGEMAN: Your Honor, the defense calls Donald
17 Perrini.

18 THE COURT: Perrini? Mr. Perrini may come forward.

19 DONALD PERRINI,

20 called as a witness by the Defendant Gross,

21 having been duly sworn, testified as follows:

22 THE COURT: Please be seated, and once you're seated,
23 please pull up to the microphone, and state and spell your name
24 for the record.

25 THE WITNESS: My name is Donald Perrini,

H37KLEB7

Perrini - Direct

1 P-e-r-r-i-n-i.

2 DIRECT EXAMINATION

3 BY MR. KLINGEMAN:

4 Q. Thank you, Mr. Perrini. And welcome.

5 Where do you live, sir?

6 A. I live in Jackson, New Jersey.

7 Q. With whom do you live?

8 A. I'm by myself. I'm a widower.

9 Q. When did you lose your wife?

10 A. Oh, 1992.

11 Q. What do you do for work or that occupies your time?

12 A. I'm retired. I'm a disabled vet.

13 Q. What did you used to do for work?

14 A. I did fencing. Fencing, chain link, stockade.

15 Q. How do you know Pastor Trevon Gross?

16 A. Trevon Gross? I met him about a little over two years ago.

17 Q. How did you meet him?

18 A. Excuse me?

19 Q. Where did you meet him?

20 A. At church.

21 Q. Hope Cathedral?

22 A. Hope Cathedral, yes, sir.

23 Q. How often have you seen him over those two years?

24 A. I see him quite a bit.

25 Q. Could you estimate for us on a weekly, or monthly, or

H37KLEB7

Perrini - Direct

1 yearly basis, how often you're in his presence?

2 A. Weekly, daily.

3 Q. And do you talk to him from time to time?

4 A. Yes, sir.

5 Q. By telephone as well?

6 A. Yes, sir.

7 Q. Do you feel like you've gotten to know him well enough over
8 the past two years to form an opinion --

9 A. Oh, yes.

10 Q. -- as to his personal character?

11 A. Yes, sir.

12 Q. So let me ask you: What, in your estimation, is Pastor
13 Gross' character for truthfulness and honesty?

14 A. Truthfulness and honesty? It's good. To me, it's
15 excellent.

16 Q. How about for his character for law-abidingness?

17 A. Also the same thing.

18 Q. And, finally, his character for generosity?

19 A. He's good -- very generous. Very generous.

20 Q. Now, in this two-year period when you've been a member at
21 Hope Cathedral, have you gotten to know the other congregants
22 and other people surrounding the church?

23 A. Oh, yes. Yes.

24 Q. The church community?

25 A. Yes.

H37KLEB7

Perrini - Direct

1 Q. Do you think you know the community well enough to
2 understand Pastor Gross' reputation in that community?

3 A. Oh, sure.

4 Q. And what would you say his reputation is for honesty and
5 truthfulness?

6 A. He's a humble, loving man.

7 Q. What would you say his reputation for law-abidingness is in
8 that same community?

9 A. Very good. Very good.

10 Q. And, finally --

11 A. I come from a law-abiding family, so...

12 Q. Well, we're talking about Pastor Gross.

13 A. Yes.

14 Q. I take it it takes one to know one?

15 A. Yes.

16 Q. Finally, what would be your testimony to the jury as to
17 Pastor Gross' reputation for generosity?

18 A. Well, if there's anything you need, I mean, he's there. If
19 he has it, he'll help you.

20 Q. Thank you, sir. Thank you for coming.

21 MR. KLINGEMAN: No further questions.

22 THE WITNESS: Thank you.

23 THE COURT: Thank you.

24 Mr. Shin?

H37KLEB7

Perrini - Cross

1 CROSS-EXAMINATION

2 BY MR. SHIN:

3 Q. Good afternoon, Mr. Perrini.

4 A. Good afternoon.

5 Q. So, having known Mr. Gross for over two years, is it fair
6 to say that you care about him?

7 A. Oh, yes, sir.

8 Q. And you're loyal to Mr. Gross?

9 A. Yes, sir.

10 Q. You certainly wouldn't want to see anything bad happen to
11 him, right?

12 A. I wouldn't want to see anything happen to anybody bad.

13 Q. Fair enough.

14 And you wouldn't want to see Mr. Gross be convicted of
15 a crime, correct?

16 A. Of course not.

17 Q. And you didn't serve on the board of HOPE Federal Credit
18 Union?

19 A. Oh, no, sir.

20 Q. And you weren't involved in any conversations between
21 Mr. Gross and federal regulators of the credit union?

22 A. No, sir.

23 Q. And you weren't involved in any discussions with Mr. Gross
24 and others about who might serve on the board of that credit
25 union?

H37KLEB7

Gross - Direct

1 A. No, sir.

2 Q. Mr. Perrini, you weren't present at a November 22nd, 2014
3 meeting involving Mr. Gross, Yuri Lebedev, and other
4 individuals about the credit union, were you?

5 A. No. I wasn't at Hope Cathedral then. I was not there.

6 MR. SHIN: Nothing further, your Honor.

7 THE COURT: Thank you.

8 MR. KLINGEMAN: Thank you, your Honor.

9 THE COURT: Thank you, Mr. Perrini. You may step
10 down. You're excused.

11 THE WITNESS: Thank you, ma'am.

12 (Witness excused)

13 THE COURT: Ms. Santillo?

14 MS. SANTILLO: The defense calls Trevon Gross.

15 THE COURT: All right. Pastor Gross may come forward.

16 TREVON GROSS,

17 called as a witness by the Defendant Trevon Gross,
18 having been duly sworn, testified as follows:

19 THE COURT: Please be seated, and if you would pull up
20 to the microphone, and state and spell your name for the
21 record.

22 THE WITNESS: Trevon Gross. T-r-e-v-o-n, G-r-o-s-s.

23 DIRECT EXAMINATION

24 BY MS. SANTILLO:

25 Q. Good afternoon, Pastor Gross.

H37KLEB7

Gross - Direct

1 What is your profession?

2 A. I'm a pastor.

3 Q. And when did you first become a pastor?

4 A. At the age of nine, I acknowledged that I was going to live
5 my life serving God, and then at the age of 14, I was licensed
6 and began the process of going to formal ministry.

7 Q. What is your educational background?

8 A. I earned my Bachelor of Arts in religion and classics at
9 the University of Virginia; my Master's of theological studies
10 at Duke University, and I was pursuing a Ph.D. at Harvard
11 University.

12 Q. How did you come to be a pastor for the Hope Cathedral?

13 A. In 2002, my wife and I pioneered Hope Cathedral in our
14 family room. So with about 17 people, including children, we
15 founded the church.

16 Q. How big is the church now?

17 A. I'd say we probably have about 700 families that are part
18 of the congregation, and we see anywhere from 300 to 400 on the
19 weekend.

20 Q. How many services do you have on a weekend?

21 A. We have three services every weekend.

22 Q. What role does your wife play at the church now?

23 A. Well, as a cofounder, she's played a whole lot of roles
24 throughout the 14 years of the church's history. So, she's
25 been our worship leader, she has been our children's ministry

H37KLEB7

Gross - Direct

1 leader. Currently, she serves as our small group pastor. So
2 our network of small groups in the church, she does that.
3 She's been our administrator. So she's held a whole lot of
4 hats throughout the years.

5 Q. Is your wife in the courtroom today?

6 A. Yes, she is.

7 Q. Point her out, please.

8 A. Yes. The beautiful lady in the gray.

9 Q. What are your duties now as a pastor of Hope Cathedral?

10 A. As lead pastor, my primary responsibility is to teach. And
11 so the weekend services are my primary responsibility, as well
12 as shepherding the pastoral care aspect to make sure all the
13 members are cared for.

14 Q. And what other services does the Hope Cathedral provide to
15 the community?

16 A. We have a lot of activities that go on throughout the week
17 and throughout the month to serve people. So we have, I
18 mentioned earlier, our small group ministry, which is really a
19 way for people to connect in relationship, so that people are
20 not alone, they go through life with people in real
21 relationships. We have an outreach ministry where we feed
22 hungry people. We take food out to homeless people who are
23 there. We actually provide toiletries and even transitional
24 housing for people when they don't have places to live, things
25 like that.

H37KLEB7

Gross - Direct

1 Q. Aside from your work at the Hope Cathedral, do you have any
2 other employment?

3 A. I serve as an adjunct professor at Pillar College, which is
4 a four-year accredited Christian university in New Jersey.

5 Q. Do you do any volunteer work?

6 A. A whole lot.

7 Q. Can you give us some examples?

8 A. Yes. I volunteer in helping people. Writing is one of the
9 things that I do, it's a gift that I have, and so I've helped a
10 lot of people write books and volunteer to help people do
11 things like that. But it's a whole host of things that I do.

12 Q. Did there come a time when you became involved in working
13 with a credit union?

14 A. Yes.

15 Q. How did you become involved in working for a credit union?

16 A. About ten years ago, a gentleman named George Wyatt invited
17 me to become a part of the advisory board of the credit union.

18 Q. Where was the credit union located?

19 A. It was located in Lakewood, New Jersey.

20 Q. Had you known Mr. Wyatt before?

21 A. He had been coming to the church for a while, and so it was
22 during one of those discussions where he talked about the
23 credit union, what it was all about, its history, and his
24 desire to have me as one of the kind of new leaders in town to
25 be connected with it.

H37KLEB7

Gross - Direct

1 Q. So what was the credit union all about?

2 A. Well, every credit union has a story. In fact, it's --
3 credit unions are a collective of people, whether it is, as you
4 heard earlier, a single segment where it's around a group of
5 people that may be an organization or it's a community-based
6 charter, which is what the Lakewood Community Credit Union was.
7 It was founded in, I think, 1968, and by a small group of
8 people who wanted to provide economic advancement for that
9 community.

10 Q. Can you tell me a little bit about the community of
11 Lakewood? What members of the community the credit union
12 served?

13 A. Yes. So the credit union primarily targeted the unbanked,
14 and really those who are day laborers, and even undocumented
15 people in that community.

16 Q. And why was this an audience that the credit union was
17 seeking to help?

18 A. Well, because it's an underserved audience. In our area,
19 because there are a lot of farms, during the seasons of
20 harvest, there are a lot of workers that come in, and they have
21 no access to -- really to the financial system. So, when they
22 get their paychecks, you often see them standing in line at
23 check-cashing places, or even banks now have started charging
24 20, 30 dollars in order to get your check cashed at the end of
25 the week. So, it's been a need ever since I've been in the

H37KLEB7

Gross - Direct

1 area, which is almost 17 years. You just see that there's a
2 whole group of people who have no access to the traditional
3 banking system.

4 Q. And what services did the credit union -- staying at a time
5 when the credit union was located in Lakewood, what services
6 did the credit union provide to the community?

7 A. One of the ways that -- and the touchpoint that George
8 talked to me about was helping people with financial
9 management, the fact that those people who are normally low
10 income, undocumented, unbanked, really need help with managing
11 money, how to manage it properly, and we had a ministry in the
12 church where we specifically helped people learn how to budget,
13 how to manage your money, how to make sure that you live within
14 your means, those types of things.

15 And so that was the primary touchpoint that brought me
16 into the credit union, but the credit union itself offered
17 savings accounts, later on it offered checking accounts, and
18 then, of course, loans to the members.

19 Q. How big was the credit union?

20 A. When I first went to it, it was probably around a 30-,
21 40-thousand-dollar credit union with maybe 60 or so total
22 members.

23 Q. And how successful was the credit union?

24 A. Well, it continued to grow. But the growth was very slow,
25 and it was painful growth, because whenever something grows,

H37KLEB7

Gross - Direct

1 there are always growing pains. So, as the credit union grew
2 and more money came in, there was also a need for the credit
3 union to make more money.

4 So, what really ended up happening was all those who
5 served on the board or the advisory board, it actually came out
6 of their pockets, and we really committed every year personally
7 to give anywhere from like 250 to \$500 a year just so the
8 credit union would have money on its balance sheet to be able
9 to support the bank accounts that it opened.

10 Q. Did sometimes board members do anything else to help
11 financially support the credit union?

12 A. Yes. So when a person came in and really needed a loan,
13 but they did not meet the underwriting requirements, oftentimes
14 board members would basically cosign their loans for them to
15 ensure that they were able to get access to the capital that
16 they needed.

17 As I said, this is a low-income credit union, and the
18 types of loans we made were very nontraditional. So, a single
19 mom who needs a security deposit because she needs a place to
20 live with her child, well, most places aren't going to lend you
21 money for a security deposit, or someone who's trying to take a
22 CPR class because they have been downsized, and they want to be
23 able to learn a skill that they can make some money from, we
24 would lend them the money to get the certification, that type
25 of thing.

H37KLEB7

Gross - Direct

1 Q. And what are the circumstances that led to the HOPE Federal
2 Credit Union coming to be located at the Hope Cathedral?

3 A. So, in 2012, Superstorm Sandy hit, and right as that was
4 happening, the building we were in also was sold. So we
5 thought we had a place where the credit union was going to move
6 to, but when Superstorm Sandy hit, that location really
7 disappeared because of the storm. So the credit union
8 basically had no place to go.

9 Q. How did it come that Hope Cathedral became the place that
10 it went?

11 A. Well, over the years, really since I became associated with
12 the credit union, I moved from advisory board after a couple of
13 years to actually being a board member. In fact, in 2007, I
14 was actually -- when the charter was changed for the credit
15 union to include those who volunteer in Lakewood, and that was
16 a charter change that enabled the church to formally get
17 involved in the credit union. So that was around the time when
18 I also became a board member, when that charter change was
19 made.

20 So, that's when the church really took a more active
21 role in the credit union, supporting the credit union. The
22 church itself then started underwriting loans for people in the
23 credit union. So rather than the individuals cosigning loans,
24 the church itself would guarantee loans. As well as people who
25 were in need, we would also send them to the credit union, so

H37KLEB7

Gross - Direct

1 that they could qualify for a loan.

2 Q. Did you come to take a leadership role at the HOPE FCU?

3 A. Over time, I moved from just being a board member, and then
4 right when the transition took place when we moved from
5 Lakewood to the church campus, that was when I was elected to
6 be chairman of the board.

7 Q. When you became chairman of the board, did you intend to
8 stay in the position?

9 A. No, I did not. It was never my desire to be heavily
10 involved in banking, but it is my heart to help out, and the
11 credit union needed leadership. The previous board in the
12 transition from Lakewood to Hope Cathedral, many of them
13 resigned, and the credit union pretty much needed a new board
14 and needed people to just support it with volunteer hours. We
15 still had members that needed to be served, and work needed to
16 be done. So, at that point it was really a rally cry to get
17 other people involved, so that we'd have all hands on-deck to
18 keep the credit union moving forward.

19 Q. Were you able to get other people involved?

20 A. Absolutely, yes.

21 Q. How?

22 A. Basically going to them and asking them, hey, this is the
23 vision of the credit union, this is what it's all about, we'd
24 really appreciate -- you have a certain skill set that would be
25 helpful, would you mind becoming a part of it.

H37KLEB7

Gross - Direct

1 Q. How many new board members were you able to recruit from
2 your community?

3 A. Almost the whole board. So except for the two original
4 members, being George and Delores Wyatt, everybody else came in
5 at my request.

6 Q. Were they affiliated with the church?

7 A. Yes, they're all active parts of the church.

8 Q. Now, in what other ways did the Hope Cathedral support the
9 HOPE Federal Credit Union?

10 A. A lot of ways. In the early days, when there was a need --
11 you've heard that word capitalization used a lot. When it was
12 coming to the end of a quarter, and it was short in its
13 capitalization, the church wrote a check to donate to the
14 credit union, so that it would meet its minimum requirement.

15 We talked about underwriting loans, and,
16 unfortunately, when you underwrite loans, there are some times
17 when people don't make good on those loans, and because we were
18 the cosigner, the church was a cosigner, that meant the church
19 paid for those loans, so that they would not become defaulted
20 loans.

21 Q. Did the church provide any other financial support for the
22 credit union?

23 A. Well, so when it was in Lakewood, and we were a part of it,
24 those were the primary ways. When it moved from Lakewood to
25 Hope Cathedral, that entire transition process was paid for and

H37KLEB7

Gross - Direct

1 undergirded by the church. So, the moving van, the movers, the
2 construction that was needed to actually renovate our offices
3 to accommodate the security for the credit union, the camera
4 system that had to be installed, the new alarm system that had
5 to be installed, all of those things were all paid for and
6 undergirded by the church.

7 In addition, when the credit union grew, and it needed
8 more than just what volunteers could offer, we actually paid
9 for teller services, we paid for computer equipment, all the
10 supplies for the credit union, telephone, website design. The
11 church fully funded the credit union.

12 In fact, it used to be known as the Lakewood Community
13 Federal Credit Union, and in the transition from Lakewood over
14 to our campus, it actually was renamed, with permission by the
15 NCUA, to become Helping Other People Excel Federal Credit
16 Union, or the acronym HOPE FCU, because there was that now
17 stronger connection between the church and the credit union.

18 Q. Did the HOPE Federal Credit Union, as a financial
19 institution, have challenges?

20 A. Yes. Yes, it did.

21 Q. Could you describe some of those challenges?

22 A. Well, it's all about growth. So if you -- you've heard
23 capitalization talked about. Every time you get money in a
24 member's account, it has to be offset with at least 7 percent
25 of revenue to the credit union. So, here comes the math part.

H37KLEB7

Gross - Direct

1 But if you get a hundred dollars, then you have to have \$7 of
2 income directed to the credit union's bottom line. So, every
3 time someone deposited money, you had to have 7 percent, at
4 least, come in as profit. And sometimes that just wasn't -- we
5 weren't making that much because the loans we put out, you
6 maybe, you know, got a couple of dollars a month in loan
7 interest, but that certainly did not offset the pace.

8 So what ended up happening was a stalemate because
9 there were people we actually had to say, you can't put any
10 money in here because we don't have enough revenue to support
11 these deposits. And that was really the challenging position
12 we found ourselves in, was that we wanted to grow -- there was
13 a need to grow because, you know, the number of people who are
14 unbanked and unserved by the financial institutions continued
15 to grow, but our ability to help them was actually stymied
16 because we did not have the revenue to continue to grow the
17 credit union.

18 Q. Did the credit union have a strategic plan for growth?

19 A. Yes. So, at some point around the time of 2011, 2012, we
20 did apply for a grant with the NCUA's Office of Small Credit
21 Union Initiatives, and they actually sent one of their
22 consultants out and worked with us to put together a strategic
23 plan to help us chart a path forward, so that we could actually
24 get to that growth that we desired.

25 Q. What were some of the steps that the credit union thought

H37KLEB7

Gross - Direct

1 might be helpful in order to achieve the growth that you were
2 seeking?

3 A. Well, chief among them -- there were several objectives,
4 but I know one of the first or second was about increasing fee
5 income, because, once again, we had to have revenue, we had to
6 have income in order for the credit union to grow. And then
7 there were some that related to innovative ways to bring in
8 partnerships to, you know, generate more money. So that was
9 working with other credit unions to do mortgages and auto
10 loans, used car loans, those types of things, in partnership
11 with other credit unions, so that there could be some kind of
12 revenue-sharing, which would cause the credit union to grow.

13 Q. Did the credit union face any technological challenges?

14 A. Well, yes. The computers that we originally worked on were
15 dying, really fast. In fact, they had come by way of a grant
16 that we had received years before, and so the technology was
17 failing. The phone system, all those types of things were
18 needed.

19 Q. Were there any limitations in the banking services you
20 could provide to the members of the credit union?

21 A. Could you define what you mean by limitations?

22 Q. In terms of services you would be able to offer to the
23 community to attract members.

24 A. Well, everything is driven by revenue. So, if you don't
25 have the revenue to be able to do the marketing, to support

H37KLEB7

Gross - Direct

1 your membership base, your options are limited. So,
2 absolutely.

3 Q. How did people get money out of the credit union?

4 A. Well, initially, we only had savings accounts. And in this
5 day and age, if you wanted to get money out of that savings
6 account, you had to come to the credit union when it was open,
7 on a day that it was opened, to request a check, that you would
8 then have to take to a bank to cash, so you could have access
9 to your money. And I think you agree that that is a pretty
10 complicated way to get money out of your own account.

11 So that was a huge barrier, which really kept the
12 credit union from being attractive to people, even the people
13 we were trying to target, because who wants to go through that
14 process just to get some money out of your own account?

15 Q. Were there plans to try to obtain more types of services
16 for people so it would be easier to bank at the credit union?

17 A. Absolutely. So, in the strategic plan, it talked about
18 looking at prepaid debit cards to ensure that -- prepaid credit
19 cards, rather, prepaid credit cards as well as debit cards,
20 because those of course give you access to your money wherever
21 you are. And for the prepaid credit card, it also helps a
22 person whose credit may not be that good, give them an
23 opportunity to help build their credit so that they can become
24 creditworthy.

25 Q. Was the credit union able to provide those services?

H37KLEB7

Gross - Direct

1 A. No. So those were wonderful goals in our strategic plan,
2 but when we researched what it cost to actually get into them,
3 for a debit card program, it was easily 12 to 15 thousand
4 dollars just to start up the process of getting the debit card
5 program, and then you had to pay per debit card and even
6 transaction fees and all those other types of things. So we
7 actually tried, I would almost say, three years we struggled to
8 find a way to get to the resources to get the debit cards.

9 In fact, one of the hurdles was, we had to have at
10 least 100 active checking accounts, as a minimum, in order to
11 do that. So we did membership drives to get more people into
12 the credit union, and we finally hit the 100 threshold. We
13 still needed the exorbitant amount of money to try to even get
14 the debit card program implemented.

15 Q. Did there come a time when you were approached by a group
16 about a potential partnership?

17 A. Yes. In late winter/early spring 2014, I got a couple of
18 messages through social media, saying, hey, interested in a
19 business partnership with you. And I really ignored them. So
20 I think one came through LinkedIn, another through Facebook. I
21 pretty much ignored them because I didn't take them seriously.
22 And then at some point an email came to the church's general
23 email account, speaking of an association that had, I don't
24 know, over 10,000 members that was interested in partnering
25 with the credit union.

H37KLEB7

Gross - Direct

1 Q. What were your thoughts when you received that email?

2 A. I was very much intrigued, quite frankly. Intrigued
3 because at that point, in 2014, I think all of us, as a board,
4 had become a little frustrated with the pace of growth, with
5 the struggle to just cause -- you know, get the credit union to
6 move forward, and we were really at that crucial point, what do
7 we do with the credit union.

8 And, for our sake, we had two decisions. The first
9 was, do we stay a community-based credit union, which of course
10 is in Lakewood even though we're in Jackson, and all that that
11 entails, or do we expand that charter to become Lakewood and
12 Jackson, or do we simply make it a single-segment credit union
13 that basically was a part of the church? We didn't like the
14 latter option only because if it was only open to the church,
15 you really couldn't help the people that needed to be helped,
16 because they'd have to be a part of the church in order to get
17 the help. So that was really where we were. It was like what
18 do we do with our next step.

19 I guess there was a third option, which for us wasn't
20 a realistic option, which was to shut it down. And that was
21 not an option for us, and here's why it wasn't an option: The
22 gentleman who helped found that credit union actually was
23 active in the credit union, as an 80-some-year-old man, up
24 until about 2012, so he was still involved. And his desire, as
25 he -- because of failing health and his wife passed away, his

H37KLEB7

Gross - Direct

1 kind of responsibility that he put really on me was, help this
2 thing keep living, don't let the investment that we put over
3 30-some years ago basically die with me. So, for us, closing
4 down the credit union wasn't an option; we had to find a way
5 for this credit union to keep on going, for the sense of legacy
6 and history.

7 So, when this email came in, it was intriguing. And
8 then when I really caucused with the other board members and we
9 had conference calls and that type of thing, that's when you
10 heard that word used earlier, it's a blessing. That's when
11 that word initially emerged in our discussions, because here we
12 are trying to decide what do we do with this thing, how do we
13 make this credit union be what it needs to be. And we saw this
14 new partnership with this organization as the answer to what we
15 were -- the problem we were trying to solve.

16 Q. Was there a specific person who first approached you?

17 A. I can't remember in the email who it was from, but I know
18 my initial discussions -- so we moved from the initial email to
19 a caucus with some board members about the possibilities, and
20 then I went and responded, hey, interested, you know, what's
21 this all about? And as I recall, we scheduled, I think it was
22 a conference call, it may have been a Skype, but it was some
23 kind of meeting where we actually -- where they laid out their
24 vision. At that point, it was Michael Murgio was the point
25 person. He presented himself as the key decision-maker and the

H37KLEB7

Gross - Direct

1 kind of the one who was behind this vision.

2 Q. What did he represent to be his vision?

3 A. Well, so he said they had over 10,000 members in this
4 Collectables Club. And he described the Collectables Club as a
5 group of high net-worth individuals who, through inheritances
6 and other things like that, had very valuable possessions that
7 they wanted to trade among themselves and that they did not use
8 things like eBay or whatever else, simply because these were
9 precious, rare types of commodities that only high-end types of
10 people would want to be involved in, and that they were looking
11 for a credit union to be a part of, because in the selling of
12 their collectibles, to have the option to have peer-to-peer
13 loans to one another as well as being able to do transactions
14 among the club members, that, for them, was very attractive.

15 Q. What were your first impressions of Michael Murgio himself?

16 A. He's been impressive person. So, when we first met him --
17 he's a very warm type of individual -- he began to share his
18 story. He actually is from Lakewood, and, you know, he talked
19 about his sister and how he comes through the area frequently
20 for family events and all those types of things. He spoke
21 about how he was a teacher and then rose up through the ranks
22 to become a superintendent of schools, and even was at that
23 time on the school board.

24 Q. What role did you think he played at the Collectables Club?

25 A. From what he represented, he was the decision-maker, he was

H37KLEB7

Gross - Direct

1 the trustee, he was the primary person. There were others who
2 were a part of it, but he was the leader.

3 Q. Did you also meet his son, Anthony Murgio?

4 A. Yes. So, around that same time, some of the conversations
5 were with Michael alone, others were with Michael and Anthony.
6 And they were talking about the vision of the Collectables Club
7 and how it would work well with the credit union. And they
8 talked about how, as high-net-worth individuals, they had a
9 concern to help people who didn't have resources, and what a
10 wonderful thing it would be for them to be able to take the
11 wealth that they had earned and be able to use it to help
12 people in need. So, everything sounded like it was great.

13 Q. Were you ever told that it was an unlawful Bitcoin
14 exchange?

15 A. Never.

16 Q. Why were you interested in the partnership?

17 A. Well, here's the primary reason why we were interested in
18 the partnership: They had over 10,000 members; we had a
19 hundred members. If you're going to secure the future of a
20 credit union, you need members, because, as one of the previous
21 witnesses said, the people who control or own a credit union
22 are the members. So, we have 107, I think, at the time, and
23 they're talking about over 10,000 members in their association.
24 So that, for us, was an amazing proposition, because if you're
25 going to secure the charter of the credit union, anything over

H37KLEB7

Gross - Direct

1 a thousand members, and let alone 10,000 members, is going to
2 give you a level of security that will cause you to grow.

3 Q. Were they bringing anything else to the table?

4 A. Absolutely. So, in addition to just having a lot of
5 members, the people that they talked about being a part of this
6 initiative were, from their resumes, very qualified people. So
7 you had technology, you had banking experience, you had
8 managerial experience, and even a lawyer. So you had all of
9 these people, and they were skill sets that none of us had.
10 So, for us, it was tremendous because they offered not only
11 members but they offered expertise that we didn't have.

12 And the third point, just being candid, is they
13 offered diversity, which is one of the things we sorely needed,
14 because in our efforts to try to grow, to get business accounts
15 in and other things like that, we would offer great rates to
16 people, you know, lines of credit to businesses, small lines of
17 credit, but, you know, be able to offer them some way that they
18 could be enticed to become a part of the credit union and they
19 liked it until they came and sat down with us and then they
20 found reason why they didn't want to bank with us.

21 And this happened too many times. So we realized, it
22 is what it is, we need the diversity, we need to have more
23 diversity in our leadership so when we go out to people, they
24 see that we serve everyone, and that they would feel
25 comfortable putting their money in this financial institution.

H37KLEB7

Gross - Direct

1 And the members being high net worth also was a plus
2 because they could obviously not only put money into the credit
3 union but also the annual maintenance fee that we charged, they
4 would actually pay, instead of a ten-dollar maintenance fee,
5 they could actually pay a more substantive annual maintenance
6 fee, which would of course be revenue right to the bottom line
7 of the credit union.

8 Q. What was your understanding about what kind of partnership
9 they were interested in getting into with the credit union?

10 A. When we first started talking, they came in saying, you
11 know, we know the business, we know, you know, banking, we know
12 all these types of things, we're ready to run, we want to come
13 in, we want to just get our members in, we want to serve our
14 members, we're ready to quote-unquote take over and really let
15 this credit union serve our association. And as much as we
16 liked the concept of them coming in, we weren't in any way
17 excited about the idea of taking over.

18 Now, we recognized that if we have a hundred members
19 and they even bring in 200 members, at the next member meeting,
20 they have the votes to do whatever they want to do. So, it was
21 our understanding that we needed to do something to ensure that
22 there wouldn't be this seismic change as soon as these new
23 members came into the credit union, because, literally, if 115
24 people come in and they're active, they outvote the current
25 people who are currently in the credit union. So, we wanted to

H37KLEB7

Gross - Direct

1 form a formal partnership with them, to ensure that if they're
2 going to take over because they have the members, it's not
3 going to be some drastic change and it's not going to be
4 something where the core of who the credit union is, which is
5 to serve the unbanked and the underbanked and underserved
6 people, that they would still stay true to that commitment.

7 Q. So, what kind of arrangement did you come to, in terms of
8 board control?

9 A. Well, there was a lot of talk. So, we talked a lot, they
10 proposed a lot of things, we countered with other things. And
11 what we came up with was, because they were bringing the
12 expertise, that they would come in and partner on the board,
13 and they would have operational control to deal with the
14 day-to-day affairs, to ensure that the credit union was run,
15 obviously, to the higher standards and all those types of
16 things.

17 Q. What was your impression of the people who were seeking to
18 join the board?

19 A. From their resumes and the discussions we had, they all
20 seemed not only eager and qualified but really had a vision to
21 see the credit union grow.

22 Q. Did you consult with other members of the board of the HOPE
23 FCU about the partnership?

24 A. Absolutely. There were a lot of conversations, individual,
25 group, you know, a lot of different iterations asking what do

H37KLEB7

Gross - Direct

1 you think about this, is it a good idea. And we all felt this
2 is something that's good, we need to, of course, enter into it
3 wisely, which is why we did a memo of understanding, to lay out
4 the responsibilities, what we would do, what they would do.
5 And over this two-year period, we conceived of really walking
6 down the road together, to ensure that when it does change
7 hands, because all these members come in, that it's in good,
8 safe hands.

9 Q. What diligence did you think the Collectables Club was
10 doing on their end?

11 A. I'm not sure I understand.

12 Q. What -- did you think the Collectables Club was -- what do
13 you think that they were doing on their end to ensure that the
14 partnership with the credit union was successful?

15 A. I'm not sure I understand your question.

16 Q. Okay. We'll ask it in a slightly different way.

17 A. Okay.

18 Q. When the members of the Collectables Club came to the
19 board, what was your understanding about what they were looking
20 to accomplish?

21 A. They were looking to build an infrastructure so that they
22 could serve their over 10,000 members in their association.
23 And so everything we talked about was building capacity,
24 looking at our current core processing system, which was CU
25 South at the time, and could that handle 10,000 members

H37KLEB7

Gross - Direct

1 actively working with the system. We didn't have debit cards,
2 they knew we didn't have those kinds of functions there, so it
3 was all about how do we build the capacity of the credit union
4 to ensure that it can serve not just the members they were
5 bringing in but also expansion efforts to continue to grow.

6 Q. Were there any specific things that they offered in terms
7 of growth of the credit union?

8 A. Well, they were going to, in addition to bringing their
9 members in, they were also going to help bring in business
10 partners and business accounts to ensure that we had a solid,
11 diverse membership that was not just individuals but also
12 businesses.

13 Q. What was your perception about whether this was a good idea
14 for the credit union?

15 A. We thought it was a great idea. They represented --
16 Michael Murgio in particular -- represented that their desire,
17 even though they were in Florida, that they were relocating
18 their headquarters to Lakewood because of all of his family
19 connections and all of those things, and that they were in the
20 process of relocating their headquarters to Lakewood because
21 they wanted to come back, quote-unquote come back home, and
22 that this would be an ideal place for them to do that.

23 Q. Did you have any concerns that the Collectables Club was
24 not in the field of membership?

25 A. Not based on what I just said, because it was our

H37KLEB7

Gross - Direct

1 understanding of the field of membership that as long as you
2 were low-income designated, which we were, that an association
3 that had an address in your field of membership was not only
4 qualified to be in the credit union but also its members, no
5 matter where they were. That was our understanding, and that
6 was really how we proceeded. So that, for us, was the
7 justification as to how we could see this partnership working.

8 Q. Were you concerned that some of them had addresses in
9 Florida?

10 A. I wasn't, simply because, based on our understanding of the
11 field of membership, as long as the headquarters was in our
12 field of membership, the members could be anywhere.

13 Q. You talked about the memorandum of understanding. Was that
14 a final agreement?

15 A. No. So, it was to be the first step in the process of
16 getting to an actual lawyer-reviewed legal agreement, which
17 would also include any money that was changing hands, being put
18 in escrow, as a way to, you know, signify the deal.

19 Q. Did members of the HOPE Credit Union vote to allow the
20 Collectables Club to join the credit union?

21 A. Yes, yes, they did. So, we first voted on the partnership,
22 and I think, in one of the minutes you all have seen, there's a
23 resolution where we talk about the partnership and having
24 operational control and what that partnership meant. That was
25 the vote that authorized me to actually go ahead and sign that

H37KLEB7

Gross - Direct

1 memo of understanding.

2 Q. Can you tell me a little bit about the election process for
3 the new board members?

4 A. Well, credit unions have an annual member meeting, where
5 those whose terms have expired or if there are any resignations
6 that have taken place, you fill your empty board slots or you
7 put up new people to be elected. So, for us, that meeting took
8 place the third Saturday in June. And so that was the time of
9 our annual meeting and our election.

10 Normally, our annual meeting was more like a lunch
11 where we would invite a lot of invited guests, but for
12 membership purposes, we had very few members really physically
13 show up, and it was mostly a lot of outside supporters who came
14 to support the annual meeting.

15 So, one of the things we talked about was, since we
16 now have new technology that was in the credit union and we had
17 the ability to allow online voting, since people don't
18 physically come to cast their vote, why don't we go ahead and
19 have the election be held online. That way, people would have
20 a window to vote, they would vote online, and they wouldn't
21 have to be physically present in order to cast their ballot.

22 Q. Was this new for the credit union?

23 A. Yes. That was the first time we did an electronic ballot.

24 Q. Why did you decide to do it then?

25 A. Well, for the reasons I just stated; because we wanted to

H37KLEB7

Gross - Direct

1 make sure that the greatest number of the membership had an
2 opportunity to not only vote but also see the people who were
3 being put up for election.

4 (Continued on next page)

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

H37OLEB8

Gross - Direct

1 Q. You talked about Michael Murgio being involved with the
2 initial discussions with respect to the Collectables Club. Did
3 he stay involved with the Collectables Club?

4 A. He did for the first portion of our time together. We had
5 training sessions, I was walking him through the system,
6 helping him understand how the credit union worked,
7 understanding terminology and all that. And my initial
8 interaction throughout the first months or so of this was with
9 Michael Murgio. He was the de facto leader as far as I knew.

10 And then right after the election, he said that he was
11 going back to Italy for two months for his vacation, and he was
12 going to have his son really stand in for him while he was out
13 of the country, but as soon as he got back, he would be
14 reengaged.

15 Q. Did that happen?

16 A. Yes, it did.

17 Q. We'll get there.

18 A. Ha ha.

19 Q. And what was your impression of Anthony Murgio?

20 A. Seemed very eager, entrepreneurial, a lot of vision, lot of
21 big ideas, that type of thing.

22 Q. What about the team that he was bringing?

23 A. They all seemed energetic, very loyal and committed to
24 Anthony, but also they seemed to have competencies in their
25 various areas. Whenever they talked about whatever their area

H370LEB8

Gross - Direct

1 was, technology, banking, whatever else, they were -- they knew
2 what they were talking about.

3 MS. SANTILLO: If we can go to Government
4 Exhibit 6085.

5 THE COURT: You said --

6 MS. SANTILLO: 6085.

7 THE COURT: Okay.

8 MS. SANTILLO: I can move on if it'll take a minute.

9 MR. SHIN: We've got it.

10 THE COURT: Up to you.

11 THE WITNESS: Okay. It's here.

12 BY MS. SANTILLO:

13 Q. Now, you had mentioned that there was a meeting where there
14 was a board discussion about the Collectables coming in and
15 taking control of the credit union. Does this appear to be
16 minutes from one of those board meetings?

17 A. Yes. This is where it says strategic partnership update
18 there, that's where we talked about it and what our plans were
19 going forward.

20 MS. SANTILLO: If you could blow that up.

21 Q. During that meeting, it states that the Collectables Club
22 would take on the responsibility of running the entire credit
23 union, and you would continue to conduct and do credit union
24 business for customers and clients. Do you recall that
25 meeting?

H370LEB8

Gross - Direct

1 A. Yes.

2 Q. And what was the discussion?

3 A. We had -- we had been talking about this for a while, so it
4 wasn't a new discussion because I think, you know, at least in
5 March and April, we had been having the discussions about this
6 partnership and what it looked like, what they brought to the
7 table. There was a meeting where we looked at the resumes of
8 all the people who were involved, so this was an ongoing
9 discussion, and it evolved over those board meetings to the
10 point where we were ready to say this really looks like it's in
11 the best interest of the credit union.

12 Q. And how did the partnership go?

13 A. Initially, it went well. So initially, it went well.
14 There was a lot of -- in the early days, I would say, if we go
15 back to the early days of just talking about the partnership,
16 there was a lot of back and forth, there were a lot of -- you
17 know, Michael Murgio in particular would, you know, offer,
18 "Hey, we can do this. We can do this. We can do this." And
19 we would talk as board members, whether it's a subset or the
20 whole board, and we would say things like, "We're not ready to
21 go there yet," those types of things.

22 But once we locked into, "Okay, here's what we're
23 going to do. We're going to partner together. Here's how
24 we're going to partner together, here are the things you bring,
25 here are the things we're going to bring." We at least locked

H37OLEB8

Gross - Direct

1 into a concept of how we were going to go forward, and it
2 started off going well. Actually, very well.

3 Each -- each person was paired up with -- so each new
4 board member was paired up with an existing board member for
5 the purposes of being trained. And we had talked about having
6 a strategic planning retreat where we would actually come
7 together and jointly craft a plan for how we go forward into
8 the future. And so it started off a tremendous partnership.

9 Q. Okay. Did you come -- I guess we'll got to the part where
10 that changed, but --

11 MR. NOBLE: Objection.

12 THE COURT: Sustained. The jury will disregard
13 comments of counsel.

14 Ms. Santillo, please stick to direct questions.

15 MS. SANTILLO: Okay.

16 BY MS. SANTILLO:

17 Q. Now, when you began the relationship with the Collectables
18 Club, was there ever an understanding about them making a
19 donation to the Hope Cathedral?

20 A. Yes. So initially, when they -- in the early conversations
21 with Michael Murgio and with Anthony, they had talked about
22 different ways to show their commitment to this partnership.
23 They said we can -- we can give money to all the board members,
24 we can give money to you and, you know -- or we can give it to
25 the church because -- and I never quite knew how they knew

H370LEB8

Gross - Direct

1 this, but they actually said, "Because we know the church has
2 been underwriting the credit union." I never knew to this day
3 how they knew that. But it was clear in our early discussions
4 that they had done their homework on who we were as a credit
5 union and who we were as a church.

6 So they had offered all different kinds of ways to
7 demonstrate that they were committed to this deal. And for me,
8 as well as for those who did know about the donation, we
9 thought the best place for that money to go was to the church
10 that had been financially supporting the credit union for all
11 these years.

12 Q. And why was that?

13 A. Well, because in our -- we saw it as a win/win. We saw
14 this group coming in, and they wanted to really take the credit
15 union to a whole nother level that we hadn't even conceived of,
16 and it would also make the church whole for its financial
17 investment that it had put into the credit union for 10 years.
18 And so in the whole context of that --

19 MR. NOBLE: Objection.

20 THE COURT: I'll allow it. Go ahead.

21 THE WITNESS: So in the context of that, we had talked
22 about, as we were supposedly moving towards this legal
23 arrangement -- remember, we had the memo of understanding, we
24 did more talking to kind of flesh out what this partnership
25 would look like, and the donation, we got as far as putting

H37OLEB8

Gross - Direct

1 together an email which detailed all of the points around which
2 we were going to then do a legal agreement.

3 And we had agreed that there were a bunch of different
4 points in that email, but towards the end of it, it was that
5 there would be the \$150,000 donation to the church, as well as
6 an exit provision that if, for whatever reason, at the end of
7 this partnership we just couldn't work together, that there
8 would be \$50,000 kind of seed money to start a new credit
9 union, and really, the old board at that point would take leave
10 and pioneer a new credit union to serve our intended audience.

11 Q. So what was your understanding about whether this was
12 connected in any way to board control?

13 A. That it was not. And I want to be -- I don't want to be --
14 to just clarify that. Because there was never any control of
15 the board, and the only way you control a credit union is
16 through its members. And even at the time that we had the
17 vote, the members in the credit union were, quote/unquote, the
18 old legacy members, and none of the new members, except for the
19 ones who were on the board, had come in. So there was never
20 any membership change that would say that the control or total
21 control of the credit union had changed. It was our intention
22 that this would be a partnership, that we would share board
23 responsibilities so that they would understand all of the
24 fiduciary responsibilities around running a credit union,
25 compliance, all of those things, and at the same time, they

H370LEB8

Gross - Direct

1 would be running the day-to-day operations, which, of course,
2 they would also be mentored in by the existing people who had
3 been serving.

4 BY MS. SANTILLO:

5 Q. Did you get involved in training the new members?

6 A. I did to a degree that I was involved. Because a credit
7 union has a lot of moving pieces. So every person who had a
8 responsibility trained their own counterpart in their duties.
9 So the person who served as board secretary was training the --
10 a board secretary. The CFO was training an assistant
11 treasurer. So everybody was paired up to actually help a new
12 counterpart learn how to run the credit union.

13 Q. Did there come a time when you became involved with a
14 business called Kapcharge?

15 A. Yes. Somewhere around this May timeframe we created an
16 account -- and I say "we" because I'm not sure who did it
17 exactly -- but an account was created for Kapcharge, and they
18 were represented as kind of the first business that the
19 Collectables Club was bringing in to show that they were, you
20 know, that they could bring in serious business member
21 accounts.

22 Q. Why were you interested in doing business with Kapcharge?

23 A. Well, initially, I didn't know fully what -- what they were
24 beyond that they were -- they did ACH processing. And I really
25 did not have any great knowledge of what -- you know, I knew

H370LEB8

Gross - Direct

1 what ACH processing is, but what a payment processor or a money
2 service business or any of those other terms we've heard this
3 week, or the last three weeks, I didn't really know what they
4 were, but I knew they were a business, and they were a big
5 business that had worked in other banks.

6 And in fact, one of the things that, when we met with
7 the principals from Kapcharge, they talked about the other
8 banks that they worked with, and the processing, and the volume
9 of processing that they did through other US banks.

10 Q. And what about their relationship with those banks did you
11 find to be interesting?

12 A. Well, their concern -- their concern was that, with the
13 banks they worked with, which were the big 10 banks in America,
14 that they pretty much set their fees and there's no
15 negotiating, which means the money that a payment processor can
16 make on a margin is much smaller because the bank takes, from
17 their perspective, a larger portion of that.

18 So what they saw as attractive was being able to be in
19 a credit union where they could process, having better rates,
20 and it would be a win/win for them, as well as for the
21 financial institution, and that seemed very attractive.

22 Q. Okay. And what was the idea about how quickly the credit
23 union would get involved in ACH processing?

24 A. Well, there was a whole need for infrastructure. Because
25 ACH origination is very involved, and there was so much we did

H37OLEB8

Gross - Direct

1 not know about it that the idea was to go slow, to
2 incrementally grow this so it could ultimately be one of the
3 funding vehicles to cause the credit union to go to the next
4 level.

5 Q. Did there come a time when -- let's see.

6 Did there come a time when the relationship with
7 Kapcharge changed? I'm sorry.

8 Did there come a time when you started doing more ACH
9 processing for Kapcharge?

10 A. Yes. So around July I think we started to do the testing
11 of transactions and making sure that we understood, you know,
12 the whole process of transmitting and receiving files, and how
13 our system would account for them, and all the reports you
14 needed to run, and all those kinds of things. And the idea was
15 really each month we would systematically increase, once we
16 knew more and also had the infrastructure to support it. So
17 pretty much July and August it was test transactions, little
18 transactions here and there until we got to September.

19 And September is really when two things happened; the
20 relationship with the Collectables Club started to sour, as
21 well as the ACH transactions started to increase.

22 Q. Why did the relationship with the Collectables Club start
23 to sour?

24 A. Well, there were promises that were made in the beginning
25 parts of the relationship that just hadn't -- hadn't happened.

H370LEB8

Gross - Direct

1 The initial discussions with Michael Murgio were that when --
2 before the summer was over, they would have their headquarters
3 in Lakewood. And there were excuses given time after time why
4 that wouldn't happen, "Well, you know, Michael's not here, and
5 since Michael's not here, he has to pull the trigger and we
6 can't do it until he gets here." And so a lot of just promises
7 that were made and commitments that were made, they just
8 weren't -- they weren't following through. And then by the
9 "they", I want to be very clear, it was with Anthony.

10 At this same time, all of those partnerships that I
11 talked about with old board members with new board members,
12 they were working together very well. We were doing training
13 sessions, demos for new software, we were looking at a new core
14 processing system that we were going to use to be able to serve
15 this larger membership. We were started the process of moving
16 to the Federal Reserve Bank, which for a credit union our size
17 was unheard of.

18 So we were -- we had big dreams to do big things, and
19 all the pieces were falling into place, except there was this
20 wildcard called Anthony who was really making things messy.

21 Q. Did you and Anthony have tension?

22 A. To say the least, yes, we did.

23 Q. Can you describe that tension?

24 A. Well, there was -- as I said earlier, Anthony was very much
25 an entrepreneurial type of person. Well, he's very aggressive

H37OLEB8

Gross - Direct

1 in his entrepreneurial endeavors, and he wanted to keep
2 pushing, keep pushing, keep pushing. If the line were in one
3 place, he would want to push just a little bit beyond that
4 line. And he was from the, you know, "ask for forgiveness
5 rather than permission" type of school, so it was really trying
6 to chase him -- you chase behind him to see kind of what he was
7 directing to have happen.

8 Q. So did there come a time when --

9 I want to back up a little bit to the beginning of the
10 summer and talk a little bit more about the formation the
11 relationship.

12 DEFENDANT GROSS: May I have some water? Is that
13 possible?

14 THE COURT: Yes.

15 Actually, it's about 4:20, Ms. Santillo, and I think,
16 given where we are, I was going to stop in about five minutes,
17 but we'll stop for the day now.

18 Ladies and gentlemen of the jury, I will send you home
19 a few minutes early with my thanks for your attention. We will
20 resume at 9:30 tomorrow, and as you see, we're obviously in a
21 new phase of the case. I just want to repeat my basic
22 instructions to you.

23 As we head toward the conclusion of the process,
24 please bear in mind all of the instructions, but no
25 communications with each other or anyone else through any means

H37OLEB8

Gross - Direct

1 about the case, no research through any means about the case,
2 and please continue, as you have, to keep an open mind until
3 you begin your deliberations.

4 Thank you so much. We'll see you at 9:30.

5 (Continued on next page)

H370LEB8

Gross - Direct

1 (Jury not present)

2 THE COURT: You may step down.

3 (Witness excused)

4 THE COURT: Matters to take up?

5 Go ahead.

6 MS. CHOI: Your Honor, I'm sorry to ask. Could we
7 have a short break so we can run to the restroom?

8 THE COURT: Yes. A couple minutes. Thank you.

9 (Recess)

10 THE COURT: Matters to take up?

11 MR. NOBLE: Judge, I spoke with Ms. Santillo regarding
12 the defendant's proposed exhibits. We're going to review those
13 tonight, the government, and we'll send her an email if we have
14 any objections. Hopefully, we'll be able to work those out
15 perhaps over email tonight. Otherwise, if there are any
16 objections outstanding, we'll bring them up first thing with
17 the Court tomorrow when we come in.

18 THE COURT: I appreciate that.

19 Ms. Santillo, I appreciate, to the extent you worked
20 around the documents in your direct, I do appreciate that.

21 Matters to take up?

22 MR. KLINGEMAN: I have a question in terms of
23 scheduling. I don't know how long the direct is going to be,
24 and I don't know how long the cross is going to be, but it's
25 conceivable that we could finish with this witness sometime

H37OLEB8

Gross - Direct

1 midday, and it's increasingly unlikely that Loretta Larkins
2 will be testifying. And in fact, I'll try to let everybody
3 know whether that changes, but at this point I don't anticipate
4 that she's coming, in which case we'll be waiting on Special
5 Agent Beyer, and I would expect her testimony to be brief.

6 If we were to conclude the witness tomorrow, I
7 understand the government's going to offer some exhibits in the
8 so-called rebuttal, but we could be done midafternoon.

9 Is the Court going to have the government close at
10 that moment?

11 THE COURT: Yes.

12 MR. KLINGEMAN: Okay.

13 MS. CHOI: Your Honor, would it be your Honor's
14 preference that, if the closing is going to last for some time
15 beyond what we have left, that we split it up so I start and
16 then finish?

17 THE COURT: I mean, I don't like to do that, but my
18 consistent principle, given what I suspect are the -- at least
19 the government's length of closing, I mean, something's going
20 to --

21 MS. CHOI: I understand.

22 THE COURT: Yes.

23 MS. CHOI: I just wanted to plan, and I wanted to put
24 the Court on notice that it is going to be a lengthy closing,
25 and that I think it would likely spill into the second day.

H37OLEB8

Gross - Direct

1 Which I understand your Honor's admonition to us that we move
2 forward at a quick pace, and we are happy to do that, I just
3 wanted to place your Honor on notice that that would be what is
4 likely going to occur.

5 THE COURT: Given where we are, and everybody's been
6 working in unity, I think, toward the efficiency goals, I'll
7 take suggestions. I don't want to not use an hour or two only
8 to then find ourselves the next day with me not being able to
9 give the charge and start deliberations.

10 MS. CHOI: I know. I totally understand that. I
11 mean, lucky for us, in this particular circumstance, the case
12 obviously divides itself with regard to the bank and wire fraud
13 part of the case versus the rest of the case, so I think there
14 is a way we could structure closings so it would make sense to
15 take a break in between, but I think realistically, there will
16 have to be spillover into that next day is what I would
17 anticipate, given the pace and everything else that's come up.

18 The other issue is Special Agent Beyer is having -- is
19 trying to get her -- I have not gotten confirmation about what
20 flight she's going to take tomorrow morning. She's getting a
21 flight tomorrow morning, and we anticipate her being here by
22 midday, hopefully, so that's the other question mark as I
23 haven't gotten an update to say confirmation about when she
24 will be here. So once I get that, I think that will also
25 inform what we do.

H370LEB8

Gross - Direct

1 I mean, obviously, if we've come to a break and the
2 defense doesn't have anything else to do, we could take an
3 early lunch to accommodate that. I don't think that's going to
4 be an issue. I wanted to flag that because I don't yet know
5 what her status is.

6 THE COURT: Okay. No, that's fine. We'll work around
7 that. It seems like it's sort of moving toward working out,
8 which is about the time -- I don't know if there will be --
9 obviously, there's documents anticipated for the rebuttal, but
10 if the government has anything further in rebuttal, if not, it
11 seems like we're heading toward finishing witnesses -- well, I
12 guess we need to do that first.

13 In any event, I think we could -- it sounds like given
14 when Ms. Beyer is getting here, it's close to working out
15 time-wise.

16 MS. CHOI: Yes, your Honor. The one other thing that
17 I would say -- I'm just thinking ahead about next steps -- we
18 still -- I don't know if we've gotten clarity or if your Honor
19 has made decisions about how it intends to charge the
20 conspiracy count.

21 THE COURT: I have that.

22 MS. CHOI: Okay.

23 THE COURT: That's on my to-do list.

24 MS. CHOI: All right. I would just say, the one thing
25 I want to know, your Honor, is that that ruling will affect in

H37OLEB8

Gross - Direct

1 some part how we close.

2 THE COURT: The closing. Absolutely.

3 MS. CHOI: So the thing that I'm a little concerned
4 about is, if we were to start the government's closing
5 tomorrow, and we were to get to a point where we're
6 transitioning away from the bank and wire fraud into the heart
7 of the bribery, I like to talk about the law a little bit to
8 frame -- you know --

9 THE COURT: We're going to resolve it tonight.

10 MS. CHOI: Okay, that's fine.

11 THE COURT: I'm ready to hear if there's any further
12 response to what the government submitted, and then I have
13 views.

14 MS. CHOI: Okay. And before we even get to that --

15 THE COURT: And just want to finish that point. What
16 we'll do is, I will resolve it tonight. We'll put it into the
17 charge. I think at that point I can do a scrub for any of the
18 "if applicable" remaining items, and then send out tonight what
19 I think is the, if not final, penultimate draft of the charge
20 for any final editing or incorporation issues for final review,
21 and you'll have that this evening as you prepare for your
22 closing.

23 MS. CHOI: Understood, your Honor. The one thing I
24 want to note is, we provided to your Honor a redacted
25 indictment which changes the count numbers, so I just wanted to

H37OLEB8

Gross - Direct

1 flag that for Mr. Rosen, I presume.

2 THE COURT: So the conspiracy count is what?

3 MR. NOBLE: Count One.

4 MS. CHOI: One.

5 THE COURT: Yes. I think that came in this morning,
6 but I hadn't looked at it.

7 MS. CHOI: Yes, your Honor. I think that might be
8 right. And the other issue we wanted to flag that would have
9 to be integrated into the charge would be the NCUA rules and
10 regulations charge, the one that we had agreed upon.

11 THE COURT: You sent that in this morning, as well.

12 MS. CHOI: Along with the indictment, I believe at the
13 same time.

14 THE COURT: We have incorporated that in the current
15 draft, and that'll be part of what -- as I say, what will go
16 out tonight is the final with your opportunity to flag any
17 errors that have been introduced in the course of our editing.

18 MS. CHOI: So one other thing to just note for the
19 record is the update on the production from the defense. It's
20 about 2,000 emails, so we're going to endeavor to see what we
21 can do to get through those tonight. You know, it's a little
22 late, but we'll do what we can.

23 THE COURT: We did stop early.

24 MS. CHOI: I guess the issue is whether or not defense
25 counsel -- if we could get a proffer as to whether or not

H370LEB8

Gross - Direct

1 defense counsel believes that it will be introducing any
2 evidence that it had produced in the if-as-when or beyond what
3 the exhibits are that you've already noticed, and an estimate
4 as to expected time with regard to how time you have left with
5 Mr. Gross so that we can prepare adequately on timing issues.

6 MS. SANTILLO: We have no intention of reviewing those
7 emails and, you know, putting emails that are in there into the
8 production -- or into the examination process. We've given you
9 the exhibits that we intend to use.

10 MS. CHOI: Okay. Do you have an estimated proffer as
11 to length of continuing direct?

12 MS. SANTILLO: An hour and a half, maybe.

13 MS. CHOI: Okay.

14 THE COURT: Okay.

15 MS. CHOI: Yes. If we could just get a proffer as to
16 when we will know about Ms. Larkins' status?

17 MS. SANTILLO: I'll let you know as soon as I know.

18 THE COURT: It sounds like you know what they know.

19 MS. CHOI: Fair enough.

20 THE COURT: All right. Responses to the government's
21 submission -- was that last night?

22 MR. SHIN: Yes, it was, your Honor.

23 THE COURT: Last night.

24 MS. SANTILLO: I think that the language the
25 government used broadens the conspiracy impermissibly and does

H370LEB8

Gross - Direct

1 constitute the constructive amendment of the indictment. I
2 think we should just track the language of the indictment.
3 They charged a specific conspiracy and they should be required
4 to prove it. The language is there.

5 THE COURT: So you mean just -- what would that
6 mean -- you mean don't do a description of the conspiracy
7 charge, just point them to what is now Count One?

8 MS. SANTILLO: No. I think that I would like to have
9 a description of what the conspiracy is as defined in the
10 indictment, and I think the way that the government
11 characterized it was, "influencing Trevon Gross in connection
12 with business decisions of the HOPE Credit Union," and that's
13 not how the indictment was charged, it was, "facilitating the
14 takeover the HOPE FCU in furtherance of an unlawful Bitcoin
15 exchange." And I think those elements have to remain in order
16 for it to be the conspiracy that was charged.

17 THE COURT: Mr. Creizman.

18 MR. CREIZMAN: My concern about the government's
19 instruction basically goes to their point 3 and point 4, which
20 I do think --

21 THE COURT: The limiting instructions?

22 MR. CREIZMAN: No, not the limiting instruction, but
23 the instruction on the conspiracy. I think that, you know, it
24 says Count Three -- where it's -- on the first page of their
25 letter, my issue -- I think it -- I think that -- sorry.

H37OLEB8

Gross - Direct

1 THE COURT: Max, yes. My binder didn't get updated.

2 MR. CREIZMAN: They list four objectives, and two of
3 the four objectives I think go beyond the scope of the
4 conspiracy, broaden the basis of conviction, and I believe that
5 that is a constructive amendment.

6 Number 3, "to obstruct examinations of HOPE FCU by the
7 NCUA and to make false statements to the NCUA in connection
8 with the NCUA's examinations of HOPE FCU", I think -- I
9 understand -- the limiting instructions follow, but to the
10 extent that -- again, I mean, this causes the same problem
11 whereas --

12 THE COURT: Yes.

13 MR. CREIZMAN: Yes.

14 THE COURT: Okay. I agree. I think the way that the
15 government proposed didn't really alter what was expressed as
16 the concern. I do agree with the limiting instructions, but I
17 have a proposal which I'll allow you to react to. I was going
18 to put it out in an order, but -- this is not an order, it's a
19 draft, but it has the language.

20 I'll ask my clerk to pass out copies and I'll read it.

21 I won't characterize it. "Count Three charges Yuri
22 Lebedev and Trevon Gross with conspiring with others from in or
23 about April, 2014 to in or about 2015 to achieve four unlawful
24 objectives in an effort to further the operations of Coin.mx or
25 the Collectables Club:

H370LEB8

Gross - Direct

1 "1. To make corrupt payments to Trevon Gross with the
2 intent to influence Gross' decision-making in connection with
3 the business of HOPE FCU.

4 "2. To have Trevon Gross receive or agree to receive
5 corrupt payments with the intent to influence Gross'
6 decision-making in connection with the business of HOPE FCU.

7 "3. To obstruct examinations of HOPE FCU by the NCUA.

8 "4. To make false statements to the NCUA in
9 connection with the NCUA's examination of HOPE FCU."

10 MS. SANTILLO: Your Honor, we would have an objection
11 to that because I think --

12 THE COURT: I thought I was --

13 MS. SANTILLO: -- because it's very clear in the
14 indictment that the conduct that is charged is trying to
15 facilitate the takeover the HOPE Credit Union, and the NCUA
16 obstruction is clearly cabined to making false statements to
17 facilitate their takeover.

18 THE COURT: Wait. I want to understand that point
19 because I think that's different from what I anticipated. Say
20 that again.

21 MS. SANTILLO: I'm just going to read from the
22 indictment, which I think is the appropriate place to define
23 the conspiracy.

24 THE COURT: I mean, you keep saying that, but that's
25 the question, and we could just point the jurors to the

H37OLEB8

Gross - Direct

1 indictment. If it's clear as that, point them to the
2 indictment.

3 MS. SANTILLO: Sure. I think that's fine. I think
4 otherwise, broadening it to "business decisions" is too broad,
5 and it is opening up a whole area of conduct that was not
6 contemplated by the indictment and wasn't considered by the
7 grand jury.

8 THE COURT: Go ahead.

9 MR. CREIZMAN: Me?

10 THE COURT: I'm sorry, yes.

11 MR. CREIZMAN: Okay. I approve your Honor's
12 instruction with two requested edits, additions, and that would
13 be to points 3 and 4. After the word "NCUA" in point 3, it
14 would be "to further the operations of Coin.mx or the
15 Collectables Club".

16 THE COURT: So I'm not rejecting it, but just to show
17 what I was trying to do, you see that the sentence before the
18 colon characterizes all four of these.

19 MR. CREIZMAN: Except for number --

20 THE COURT: So if you read it -- so "Count Three
21 charges -- to achieve four unlawful objectives in an effort to
22 further operations of Coin.mx or the Collectables Club:

23 "3. To obstruct examinations of HOPE FCU by the
24 NCUA."

25 So it's meant to, and I suppose we could just repeat

H370LEB8

Gross - Direct

1 it, but it's meant to have "in an effort to further the
2 operations of Coin.mx or the Collectables Club" to each of
3 these.

4 MR. CREIZMAN: I actually think that that's right.
5 Now that I look at it again, I like it. I think it works. I
6 think that that captures -- to me, in my mind, as I understand
7 the conspiracy, that captures what I understand to be the
8 conspiracy.

9 THE COURT: That is what I was going for. And I
10 recognize I looked at this a lot longer than you did. I
11 actually had thought I had taken where you were, Mr. Creizman,
12 and I thought I met halfway between where you were and where
13 Ms. Santillo was yesterday. But it sounds like maybe
14 Ms. Santillo has a different point.

15 What's the government's view?

16 MR. SHIN: Your Honor, so the government would be okay
17 with either approach, either the language proposed by the Court
18 here or the alternative offered by the Court of simply pointing
19 the jury to the indictment for the definition of conspiracy and
20 still giving the limiting instructions. So we're fine with
21 either one. I don't know that this is that far off from what
22 we had proposed yesterday, but we're fine with what your Honor
23 has offered here.

24 THE COURT: Mr. Klingeman is trying to get your
25 attention.

H370LEB8

Gross - Direct

1 Why don't you take a minute and look at the
2 instruction and I'm going to think about the indictment.

3 (Pause)

4 MR. CREIZMAN: I actually prefer your Honor's charge
5 with no limiting instructions. That is what we are advocating,
6 no limiting instructions. I think your Honor's charge covers
7 it, and I'll have an Apple for your Honor in the courtroom
8 tomorrow morning. No.

9 THE COURT: Is that an iPad joke?

10 MR. CREIZMAN: No, an Apple for the teacher. Like --

11 THE COURT: Wait.

12 MR. CREIZMAN: I actually think that this is -- to me,
13 this -- I would not want -- I think that without -- the
14 limiting instructions, they are confusing. This covers what I
15 think would be the contours of the conspiracy as charged in the
16 indictment. I think a reference to the indictment would
17 need -- if we were to refer to the conspiracy in the
18 indictment, the limiting instructions would be necessary. If
19 we refer to this paragraph that your Honor crafted, it would
20 not need limiting instructions. In fact, I'd be opposed to
21 limiting instructions. I either want your Honor's charge on
22 the conspiracy or a reference to the indictment with the
23 limiting instructions. That's my position.

24 THE COURT: I can't say I had anticipated that move.
25 Interesting.

H370LEB8

Gross - Direct

1 MR. NOBLE: Judge, so we can clarify. Mr. Creizman's
2 position, is it you don't want -- you would take the Court's
3 definition of the conspiracy with no limiting instructions?

4 THE COURT: That's what he said.

5 MR. NOBLE: Or not --

6 THE COURT: No, I'm only.

7 MR. NOBLE: We were surprised by that, one thing, but
8 then the other option --

9 MR. CREIZMAN: Why surprised?

10 MR. NOBLE: -- so you're saying all the evidence that
11 has come in to prove up the conspiracy --

12 MR. CREIZMAN: I see what you're saying.

13 MR. NOBLE: -- against your client, against Mr. Gross
14 for all purposes --

15 MR. CREIZMAN: Obviously -- I get what you're -- no,
16 I'm sorry.

17 MR. NOBLE: We were wanting to clarify.

18 THE COURT: I'm grateful because I thought --
19 Mr. Noble, I thought I had said the exact same thing and he
20 said yes, but somehow you have a power of persuasion.

21 MR. CREIZMAN: He does. He really does honestly with
22 me. It's amazing. But I guess I was focusing, though, on the
23 definition of the conspiracy.

24 THE COURT: So what my --

25 MR. CREIZMAN: I think what --

H370LEB8

Gross - Direct

1 THE COURT: What I had proposed -- and as I said, I
2 was going to just put out the order, but I'm taking your
3 reactions to it, was, this is the definition of the conspiracy
4 with the same four limiting instructions that had come in by
5 the government's letter, I don't know if you repeated it last
6 night, but your original four limiting instructions.

7 MR. CREIZMAN: I'd prefer that. I'd prefer that. I
8 prefer your Honor's charge.

9 THE COURT: With those limiting instructions.

10 MR. CREIZMAN: Yes. I mean, for the purposes of the
11 evidence, as long as we're not talking about when you can
12 convict. I forgot what the limiting instructions were, quite
13 frankly.

14 THE COURT: Can you take a look at them?

15 MR. CREIZMAN: Yes. I left early, unfortunately, and
16 then had -- yeah, I'll read this now.

17 THE COURT: So Mr. Creizman's looking at it. The
18 government, I think --

19 MR. SHIN: Yes, your Honor. So we're --

20 THE COURT: -- you're not thrilled, but --

21 MR. SHIN: Exactly. The language we -- you know. I
22 thought the language we proposed was pretty well-written,
23 but --

24 THE COURT: What does "in favor of" mean? Where did
25 that come from?

H370LEB8

Gross - Direct

1 MR. SHIN: All right. So maybe we were wrong. We
2 would be equally happy with either the Court's proposed
3 language in this draft order or the alternative of pointing the
4 jury to the indictment, and with either approach, using the
5 limiting instructions that we set forth in our letter filed
6 last night which -- the same four limiting instructions that we
7 filed in the prior letter.

8 THE COURT: Understood.

9 Ms. Santillo.

10 MS. SANTILLO: Yes, your Honor. I just think that it
11 should track the indictment in the sense that it says, "as a
12 first object to make corrupt payments to Trevon Gross with the
13 intent to influence Gross' business decision-making in
14 connection with the business of HOPE FCU," I think that's much
15 too broad because the indictment --

16 THE COURT: Well, I mean, again, I could repeat the
17 clause, but what's -- so repeating it would be, "to make
18 corrupt payments to Trevon Gross with the intent to influence
19 Gross' decision-making in connection with the business of HOPE
20 FCU in an effort to further the operations of Coin.mx or the
21 Collectables Club."

22 MS. SANTILLO: I would just track the indictment to
23 say "to facilitate the takeover of HOPE FCU".

24 THE COURT: I'm sorry. So you are saying something
25 different. So you want to change it to -- so in number 1 or

H370LEB8

Gross - Direct

1 number 2?

2 MS. SANTILLO: Number 1. "To make corrupt payments to
3 Trevon Gross to facilitate the takeover of HOPE FCU", which it
4 says repeatedly in the indictment, "in furtherance of the
5 scheme to facilitate the takeover of HOPE FCU". My fear is
6 that, if we leave it the way it is, it encompasses all this,
7 you know, processing activity by Kapcharge that is not charged.

8 THE COURT: Let me just look at that language for just
9 a moment. So you are okay with the way it's structured to have
10 the "in an effort to further the operations of Coin.mx or the
11 Collectables Club"?

12 MS. SANTILLO: Yes, I'd like that very much.

13 THE COURT: Cool. That's what I was waiting for.

14 And then the one change you're proposing is to
15 number 1, changing "in connection with the business of HOPE
16 FCU" to "to facilitate the takeover of HOPE FCU".

17 MS. SANTILLO: Yes, that's my proposal, which I think
18 is consistent with the indictment.

19 THE COURT: Mr. Creizman.

20 MR. CREIZMAN: I think that -- okay. Again, I'm going
21 to stick with the Court's instruction on the conspiracy. I
22 guess the way I look at the limiting instructions, I find them
23 to be somewhat confusing, and based on the definition of the
24 conspiracy, I think that how people can consider the evidence
25 is basically -- it naturally flows from that. What the

H37OLEB8

Gross - Direct

1 limiting instructions say actually logically flows from the
2 Court's definition of the conspiracy.

3 But that being said, you know, so I'm okay with the
4 Court's order as is. I didn't consider what Ms. Santillo just
5 said. I'm sure if the Court is okay with that, I'm fine with
6 it. I think that -- but I want the instruction grounded in the
7 Court's order. That's the key.

8 THE COURT: Mr. Shin.

9 MR. SHIN: Your Honor, the government would have an
10 objection to Ms. Santillo's phrasing. Your Honor's proposal
11 already narrows -- let me take a step back.

12 As we argued previously, the statutory allegations in
13 our indictment are, in fact, broader than the Court's proposal.
14 Obviously, there are other allegations in the indictment, as
15 well, but I think your Honor's preparatory clause right before
16 number 1 is an attempt, as I understand it, to capture the
17 speaking allegations from the indictment, that's why your Honor
18 put "in an effort to further the operations of Coin.mx or the
19 Collectables Club".

20 To then on top of that insert in clause 1, and
21 presumably in clause 2, "to facilitate the takeover of HOPE
22 FCU", in our view, would unduly narrow the indictment. She's
23 just asking the Court to take a snippet -- to take snippets of
24 speaking language in the indictment, which are, as your Honor
25 put it yesterday, glossed in the indictment, and then insert

H37OLEB8

Gross - Direct

1 that into the very definition would be an undue narrowing of
2 the charge in the indictment, your Honor.

3 (Continued on next page)

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

H37KLEB9

1 MR. SHIN: (Continuing) Ultimately, the grand jury
2 found -- they voted on this indictment that included the broad
3 statutory allegations, with the gloss, but it wasn't this
4 narrow proposed language that Ms. Santillo is proposing.

5 I think your Honor's proposal, as it's currently
6 written, captures as much narrowing as the indictment can
7 withstand without being distorted.

8 MS. SANTILLO: Your Honor, to the extent we're varying
9 from language in the indictment, we would rather just rely on
10 the indictment because I think it is that narrowly framed.

11 THE COURT: I think the difficulty -- the problem is,
12 we can't pick and choose isolated phrases. A description for
13 the jury's benefit would have to capture the --

14 MR. KLINGEMAN: Well, your Honor, if I could make a
15 suggestion.

16 THE COURT: Go ahead, Mr. Klingeman.

17 MR. KLINGEMAN: Your Honor is giving a copy of the
18 indictment to the jurors. So, what I would suggest is at the
19 point in the instructions where your Honor makes reference to
20 the indictment, just simply note that you will be giving a copy
21 of the indictment to the jurors, and, if you want, if your
22 Honor prefers or thinks is appropriate, list the counts and
23 their titles, and indicate which defendant is listed in each
24 count, and then refer to the indictment for a more fulsome
25 description of each of those counts. And then there's no

H37KLEB9

1 paraphrasing, there's no editorial judgments being imposed on
2 what's being provided to the jury. They're just simply being
3 given the indictment. And none of us can complain that they
4 have not received what is at issue in the case.

5 MR. SHIN: So, I'm hearing now, I think, two of three
6 parties here that find that option acceptable. I actually
7 can't remember how you came out, Mr. Creizman, on whether this
8 is an acceptable alternative, just referring to the indictment.

9 MR. CREIZMAN: My first choice is the Court's
10 resolution, the way the Court has written it. That actually is
11 mine, but that's where I stand. And I'm going to stick with
12 that because that's what I believe.

13 THE COURT: Well, here's my question if I do just
14 point to the indictment: It would be pointing to the
15 indictment with the limiting instructions. I want to make sure
16 we're not just kicking the can, and where, in argument, in
17 summation, might there be disputes. I think, Ms. Choi, you
18 quite reasonably said you wanted to know the resolution to this
19 because it could affect the summation.

20 Now, maybe we all know what's appropriate in light of
21 the limiting instructions --

22 MR. CREIZMAN: But the limiting instruction -- right,
23 but the limiting instruction actually -- again, I find the
24 limiting instructions confusing and a little bit just
25 long-winded, complex, byzantine. That right over here, this

H37KLEB9

1 indictment right here, you have a basis to argue what the
2 conspiracy is to the jury, you know that if you're going
3 outside the bounds, you know if the government -- which they
4 never do -- is going outside the bounds, and there won't be
5 these kinds of -- we'll have a basis, so as we won't be
6 objected to, there won't be these kinds of disputes. This is a
7 very -- I think it's an accurate instruction, and with the
8 indictment, it's the Wild West. The government could argue
9 that Yuri Lebedev's involvement in Collectables Club after
10 January 2015 to form a federal credit union was -- could be a
11 basis for violating Count Three. And with this, no, it's very
12 clear to me. The indictment is not so clear.

13 THE COURT: I'll tell you, I think my task is to try
14 to direct the jury in a way to prevent any kind of error and
15 make sure they have clarity. I see very little difference
16 between the clause "in connection with the business of HOPE
17 FCU" and to "facilitate the takeover of HOPE FCU." To the
18 extent there is light between them, it's a variance kind and
19 not an amendment kind. That said, it's still the case that I
20 think we know what the relevance is of the kinds of categories
21 of evidence that are in post fallout and for what their
22 purposes are. I'm just not sure it matters, and I'm not sure
23 it makes much difference. Really, I'm not sure it matters. I
24 do think -- I agree with Mr. Creizman. He's reasonable.

25 MS. SANTILLO: Your Honor, for the record, I just want

H37KLEB9

1 to state that the basis for my concern is the sheer volume and
2 repetitiveness of discussions about ACH processing that were
3 not charged in the indictment. The indictment specifies
4 facilitating an unlawful Bitcoin scheme, and I do think that
5 that is prejudicial, and I think it's a constructive amendment,
6 and the language that is in there is broad enough to allow the
7 government to try to prove something it did not charge. And
8 that's my concern.

9 MR. SHIN: Your Honor, just to address your Honor's
10 last comment: The reason why the government has an issue with
11 inserting "to facilitate the takeover of HOPE FCU" is we're
12 concerned that the jury will read that and think that that
13 means that only conduct that directly went to, for example, a
14 change of board membership, like literally things that go to
15 change of control of the credit union, that that is literally
16 the scope of the conspiracy. We've argued at length why we
17 think the conspiracy, fairly read, actually encompasses not
18 just that change of control, but also then running the now
19 captive HOPE FCU.

20 "To facilitate the takeover of HOPE FCU," that
21 language, if that were inserted in clauses one and two, that
22 also -- we think it runs into some tension with the clause that
23 your Honor proposed to insert before the numbered clauses. So,
24 if it was to achieve these objectives in an effort to further
25 the operations of Coin.mx or the Collectables Club, that

H37KLEB9

1 included, that did fairly include the other conduct that
2 happened after the change of control was effected. So, that's
3 our concern, is that this potentially unduly narrows the jury's
4 consideration to just literally the change of the board
5 membership, the particular -- whether there was a majority or
6 not, those particular acts, while the indictment includes
7 allegations including the overt acts which go beyond that,
8 because we think that the scope is beyond that. It includes,
9 for example -- this is why, your Honor, the overt acts, they go
10 past the June meeting. The June meeting is arguably where the
11 change of control happened.

12 So, if that language is inserted, there's a risk that
13 the jury will say, okay, so the conspiracy is really just about
14 the June meeting, and, therefore, they'll incorrectly not
15 consider all the stuff that went around that, and after that,
16 including all of the overt acts that are listed in the
17 indictment that go beyond the June meeting, including the
18 additional payments, the events --

19 THE COURT: And that's clear in the indictment, just
20 by time frame alone, among other things.

21 MR. SHIN: Exactly, your Honor. We charge April of --
22 I think the indictment says April of 2013. That's a typo, we
23 concede, your Honor. It should be April 2014 through 2015.
24 And so, again, that's our concern, your Honor. I'll try not to
25 repeat myself. But that's why we would object to the insertion

H37KLEB9

1 of that additional language, and we would suggest that your
2 Honor either go with the proposal as written or proceed with
3 the alternative that is now acceptable to Mr. Klingeman and
4 maybe is a second best option for Mr. Creizman.

5 THE COURT: All right. I think what makes sense, is
6 to go with what I proposed. It's consistent with the Court's
7 fair reading of the indictment, it's an effort to provide
8 guidance to the jury, and, in light of the limiting
9 instructions, I don't share the concern as to the grand jury
10 issue. So we'll do that.

11 MR. SHIN: Thank you, your Honor.

12 THE COURT: I think I said this, but to the extent
13 there is a distinction between the language proposed and what I
14 am going with, it's, at most, a variance, if that, and not -- I
15 can't see it as a constructive amendment.

16 Anything else?

17 MR. SHIN: Just --

18 THE COURT: So I will incorporate -- well, what is the
19 proposal as to where the definition of the conspiracy and the
20 limiting instructions go?

21 MR. SHIN: Your Honor, I think it makes sense to put
22 the definition of the conspiracy in the introductory conspiracy
23 charge, where currently we just have the reference to the four
24 objects, it's kind of barebones language. It seems like it
25 would make sense to insert that there, your Honor.

H37KLEB9

1 THE COURT: What page?

2 MR. SHIN: Your Honor, the Court currently has
3 instruction number 20, Count Three overview. Obviously, the
4 count number will need to be renumbered in light of the
5 redacted indictment, but that instruction lays out the basics
6 of the fact that it's a conspiracy charge, and it currently
7 says in this case, "the government has charged the defendants
8 with what is called a multiobject conspiracy," and then below
9 that, it has the four objects. So, the Court may be able to
10 insert the definition, perhaps, right in between -- right
11 before the four objects are specified.

12 THE COURT: Okay.

13 Mr. Creizman?

14 MR. CREIZMAN: I think that's fine. That sounds
15 right.

16 THE COURT: Ms. Santillo?

17 MS. SANTILLO: Just preserving our strong objection to
18 the language, that placement is fine.

19 MR. SHIN: Then in terms of the limiting instructions,
20 your Honor, the current Count Three instructions, your Honor,
21 instruction 26 is liability for acts and declarations of
22 coconspirators, and instruction number 27 is the withdrawal
23 charge that the government has objected to. So, perhaps the
24 Court --

25 THE COURT: Well, actually, I'm prepared to rule. I'm

H37KLEB9

1 going to give the withdrawal instruction and the
2 multiple-conspiracy instruction.

3 MR. SHIN: So perhaps it makes sense to include --
4 your Honor, is it the Court's intention to place the
5 multiple-conspiracy charge after the withdrawal charge or did
6 the Court have a proposal for where that would go?

7 THE COURT: I didn't have it in. No, I'm open to a
8 proposal.

9 MR. SHIN: So, your Honor, currently, instruction 27
10 is withdrawal.

11 THE COURT: Right.

12 MR. SHIN: It probably makes sense to include multiple
13 conspiracies after that, and then the limiting instruction can
14 go after, kind of a wrap-up, because it applies basically to
15 everything that comes before in terms of what the jury can
16 consider.

17 THE COURT: I think that's logical.

18 Mr. Creizman?

19 MR. CREIZMAN: Ms. Madrigal was whispering something
20 to me and, I'm sorry, I couldn't hear because Ms. Madrigal --
21 I'm sorry, I'm sorry, I had to --

22 THE COURT: Ms. Santillo?

23 MS. SANTILLO: I'm just wondering how necessary the
24 limiting instruction is in this context, and I just don't know
25 how it's going to look in terms of coming after the defined

H37KLEB9

1 conspiracy and then the withdrawal and the multiple
2 conspiracies. So I'm just hesitating about my position.

3 THE COURT: Okay.

4 MR. CREIZMAN: That's what it was. I'm fine with the
5 way that it's proposed, in terms of where it's placed.

6 THE COURT: Ms. Santillo, I think it was you who had
7 requested the multiple-conspiracy instruction, right?

8 MS. SANTILLO: Yes.

9 THE COURT: So, it's not that you don't want it, it's
10 just a concern about putting the limiting instructions after
11 that --

12 MS. SANTILLO: Yes.

13 THE COURT: -- or the total ordering of the three?

14 MS. SANTILLO: Yes, I just wanted it read all
15 together, and I had not focused closely on the limiting
16 instruction letter that Mr. Shin filed last night.

17 THE COURT: Yes, it's the same instructions as from
18 the weekend.

19 We'll adopt the proposal of the government. As I say,
20 we're going to incorporate it and I'll send it around again. I
21 think I have now resolved all the open issues.

22 MR. SHIN: Yes, your Honor. And so we had obviously,
23 in our submission over the weekend, in which we opposed the
24 withdrawal and multiple-conspiracies charge, we had also
25 proposed some language changes, if the Court were to give those

H37KLEB9

1 charges and, rather than take them up, should we wait and see
2 what the Court issues?

3 THE COURT: Yes, I'll look at those. I haven't yet.

4 MR. SHIN: I will just note, this is set forth in
5 detail in our papers but just given that -- I'm not attempting
6 to relitigate the withdrawal, whether it should be given at
7 all, your Honor, but it's a little hard to fathom how
8 withdrawal could be a complete defense in this case because
9 it's only a complete defense if it happens before any overt
10 acts happen, of any coconspirator, and their theory of
11 withdrawal is November 24th or so of 2014, when there were
12 months of overt acts that took place beforehand.

13 So, if the Court is going to give the withdrawal
14 instruction, our view is that the proposed language that we've
15 included is particularly important so that the jury is not
16 under the misimpression that by purportedly withdrawing months
17 into a criminal conspiracy, that somehow immunizes the
18 defendant from everything that came before.

19 So I would just make one last pitch for the requested
20 language to be added to the charge, as set forth in our letter
21 over the weekend.

22 THE COURT: I will take a look. I don't know if
23 Mr. Creizman or Ms. Santillo had a chance to look at it either.

24 How about --

25 MR. CREIZMAN: I have not.

H37KLEB9

1 THE COURT: You have not?

2 Ms. Santillo?

3 MS. SANTILLO: I have not.

4 THE COURT: So I'll take a look at it. I'll
5 Cub-Scout -- my kids are Cub Scouts, so this is present in my
6 mind. I'll do my best and either adopt the government's
7 language or not or some variation, and the defense can have an
8 opportunity to still react to that language, but it will be
9 this evening because I want to finalize the charge by the
10 morning.

11 MR. SHIN: Thank you, your Honor.

12 THE COURT: Anything else?

13 MS. CHOI: Your Honor, this is just on behalf of our
14 paralegals: Looking ahead, we wanted to get an understanding
15 of how you expect or prefer your jury to receive exhibits, what
16 your preferences are in terms of both when as well as format.

17 As your Honor knows, I think the parties had agreed
18 that, given that certain of these exhibits, such as the
19 WhatsApps, require a computer, we're going to prepare one, but
20 some of the exhibits we didn't print out because they're so
21 voluminous. So I didn't know how your Honor wants to deal with
22 that. Does your Honor expect that these exhibits be ready in
23 whatever form at the moment that the jury goes back? Or how
24 you usually handle it?

25 THE COURT: It depends a little bit on the timing. At

H37KLEB9

1 base, what I do is have the parties come to agreement on what
2 can go back based on the list we have been developing
3 throughout the trial. I do also seek agreement on the list,
4 the list of admitted exhibits, which I'll make a court exhibit.
5 So, ideally, as soon as the jury goes back, on the record you
6 agree to the sort of stack of materials and the exhibit list, I
7 get your on-the-record agreement that you've all looked through
8 that and agreed to it, and then it goes back to the jury.

9 In the middle of that question is, how to handle
10 electronic material and voluminous exhibits.

11 MS. CHOI: Yes, your Honor. I think it's also just a
12 timing issue, as your Honor recognized, because I think it
13 would be -- the paralegals could speak up if they disagree but
14 I think it would be --

15 THE COURT: Technically, they can't.

16 MS. CHOI: Well, they can speak up to me.

17 But I think, and correct me if I am wrong, but at
18 least with regard to getting the exhibits in a timely fashion,
19 we can very quickly make sure, once the parties agree, to get
20 the electronic versions of everything loaded onto the hard
21 drive. That shouldn't be a big issue. And then I think it's
22 just a question of getting all the paper, because to
23 double-check that, have defense counsel double-check to make
24 sure they're all right, and I don't know how many copies your
25 Honor wants us to send back, if one is enough.

H37KLEB9

1 THE COURT: One copy of the evidence unless there's
2 some specific request or need for something different.

3 MS. CHOI: I just think that that's going to take a
4 little bit of time, and we wouldn't want to delay the jury
5 unduly. So our proposal would be, in the first instance, to
6 send back an electronic copy of defense exhibits and the
7 government exhibits with the computer, and then we can work,
8 the paralegals can work, while the jury is in there
9 deliberating, on trying to get the paper copies together,
10 because I'm sure defense counsel would want an opportunity to
11 double-check our work.

12 THE COURT: With the exception of the material that
13 has been bracketed for the government's case, that will go in
14 on the redirect, I presume you're in a good position to pull
15 together this evening -- the paralegals are.

16 MS. CHOI: They're very sleep deprived, your Honor.
17 But, yes, we'll work on it, but it is a lot. Obviously, this
18 has moved --

19 THE COURT: It's not going to go to the jury tomorrow
20 but --

21 MS. CHOI: Friday.

22 THE COURT: It could go Thursday.

23 MS. CHOI: Sorry, Thursday. That's what I had in my
24 own mind. I got the dates confused.

25 But, yes, it could go in the day after tomorrow. So,

H37KLEB9

1 we'll work on it.

2 THE COURT: I know everybody's tired, but we need to
3 push through so that we're in a position to give the jury what
4 they need and not delay that process. So, yes, I think as soon
5 as possible. At some point tomorrow, I think the government
6 should propose to the defense what constitutes the government's
7 evidence in the case, and then, as soon as the defense -- and
8 you can do that for Mr. Lebedev as well, obviously, since
9 that's done, and then it's just what remains outstanding with
10 respect to Mr. Gross and the redirect. Okay?

11 MS. CHOI: Yes, your Honor.

12 THE COURT: I'm sorry, rebuttal.

13 MS. CHOI: Yes, we understood.

14 THE COURT: Anything else, Mr. Klingeman? No?

15 All right, see you at 9:00. But on-time 9:00.

16 (Adjourned to March 8, 2017 at 9:00 a.m.)

17 * * *

INDEX OF EXAMINATION

Examination of:	Page
ROSE LINTON	
Direct By Mr. Shin . . . . .	.3244
Cross By Mr. Klingeman . . . . .	.3255
JOHN ROLLINS	
Direct By Mr. Noble . . . . .	.3256
Cross By Ms. Madrigal . . . . .	.3378
Cross By Mr. Klingeman . . . . .	.3387
Redirect By Mr. Noble . . . . .	.3406
Recross By Mr. Klingeman . . . . .	.3408
DANELLE HORVATH	
Direct By Mr. Klingeman . . . . .	.3422
Cross By Mr. Shin . . . . .	.3425
BARBARA FLOYD	
Direct By Mr. Klingeman . . . . .	.3431
Cross By Mr. Shin . . . . .	.3434
DONALD PERRINI	
Direct By Mr. Klingeman . . . . .	.3437
Cross By Mr. Shin . . . . .	.3440
TREVON GROSS	
Direct By Ms. Santillo . . . . .	.3441

GOVERNMENT EXHIBITS

Exhibit No.	Received
4020 . . . . .	.3242
4013 . . . . .	.3243
4014 . . . . .	.3243
601, 602, and 603 . . . . .	.3248
900-1 through 900-6 . . . . .	.3262
900 series . . . . .	.3297
900-104 . . . . .	.3376

DEFENDANT EXHIBITS

Exhibit No.	Received
DX17 through 23 and DX26 through 28, . . .	.3421
DX15 and DX16, and DX25	